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**Managing Shared Residence:**  
**A study of fathers' experiences in Britain and France**

by

**Francis Alexander Masardo** (BA Hons., MRes)

A thesis submitted for the degree of Doctor of Philosophy

**University of Bath**  
**Department of Social and Policy Sciences**  
**November 2008**

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## **Dedication**

I would like to dedicate this work

To my father, Françesc (Paco) Masardo y Tenas 1940–2005

And to my mother, Virginia Masardo y Gleadell 1938–2008

Each has been a continual inspiration and tower of strength and support to me.

I salute their great courage and compassion

And I feel privileged to have lived in their light for so long.

Finally, to my good friend Stephen Bennett 1966–2006

In admiration of your boundless spirit of adventure, devotion to your children

And gift of helping others to see the world through fresh eyes.

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## Abstract

One of the most striking developments to have taken place in post-separation care arrangements for children in recent times has been the increasing interest in, and practice of, shared residence. Here, children reside with each parent for roughly equal amounts of time by alternating their home life across two households, reflecting the fact that a growing number of fathers are expressing a desire to be centrally involved in the parenting of their children post separation. As this practice has come under increasing scrutiny, the issue of shared residence has climbed the political agenda in a number of jurisdictions around the world and the legislative and policy responses have been both varied and controversial.

My doctoral research uses qualitative methodology to explore and compare fathers' experiences of managing such arrangements in Britain and in France. The thesis identifies areas of complexity within which different models of shared residence are becoming established, with particular reference to the legal frameworks and social policies in each national context as well as to the roles of, and relationships between, the various social actors involved. Through an examination of what helps and what hinders fathers in negotiating and managing such arrangements, I explore some of the main challenges fathers face when parenting in multi-residence situations. In particular, the analysis brings the nomenclature of the lone-absent parent divide into question by asking where this emerging model of post-separation family life can be situated.

**Key words** shared residence, post separation, parenting, fatherhood, negotiation, cross-national, Britain, France

# Chapter 1

## Shared residence: a relational and structural analysis

### Background

The past thirty years has seen major shifts in the demographic constitution of families and households, in particular with regard to aspects of their formation and dissolution. A growing diversity in family forms has meant that increasing numbers of children are growing up in households that do not include both biological parents. Much of the research and policy interest surrounding these changes has focused on the growth in lone motherhood, where the ratio of lone mothers to lone fathers has remained remarkably consistent over many years, at roughly nine to one (Duncan and Edwards, 1999). As a result, inasmuch as fathers have been portrayed at all, they have been considered largely in their role as ‘separated’ or ‘absent’ fathers living apart from their children. This focus has tended to mask the substantial differences that exist in the nature of their contact, care and residence arrangements, and in the extent to which fathers continue to play an active and engaged role – emotionally and instrumentally – in the lives of their children, despite the parents’ separation.

An increasingly favourable social and legal disposition towards the continuation of parent–child involvement, allied to notions of the welfare and ‘best interests’ of the child, has meant that despite the parents’ separation ‘[t]he notion of a biological family which transcends individual household boundaries and in which children retain both parents in their lives . . . is a lived reality’ (Neale *et al.*, 1998: 16). Not only are fathers involved in forms of ongoing and regular contact but for some a distinct model of post-separation family life in which both parents share the day-to-day care and residence of the children can be discerned – ‘shared residence’. Here, children reside with each parent for roughly equal amounts of time by alternating their home life across two households; in effect – for the children – a ‘dual residence’ (Maccoby and Mnookin, 1992; Neale *et al.*, 2003).

As this practice has come under increasing scrutiny, the issue of shared residence has climbed the political agenda in a number of jurisdictions around the world (Rhoades and Boyd, 2004), and the legislative and policy responses have been both varied and controversial. Examining how such practices manifest themselves within different national contexts can provide us with a lens through which to view responses to such developments. Within Europe, Britain and France represent two interesting cases-in-point. When we look at their respective levels of social and economic development, levels of divorce and cohabitation, roles of women and the changing expectations and behaviours of men, we would expect to find relatively similar trajectories regarding such practices. However, marked differences in approach can be discerned, reflected in both the patterns of care parents adopt and the legal and policy frameworks within which they operate. As such, a focus on Britain and France can increase our knowledge of different nation-specific systems while simultaneously contributing to a greater understanding of this phenomenon more generally.

Definitions of shared residence lack precision but arrangements may typically involve upwards of 30 percent of the child's time throughout the year being spent in each household; usually designated by the number of overnight stays. Baker and Townsend (1996), for example, drawing on the American divorce literature suggest that this 30–70 spectrum of residence in any one household is appropriate as a general rule, and Bradshaw *et al.* (1999), in their seminal study of non-resident fathers, use a similar definition, setting a slightly lower minimum threshold of 104 nights over the year for the 'shared care' group they identify.

This ambit of residence, though clearly artificial and by no means a definitive guide as to what might constitute such arrangements, is nevertheless a useful means by which to distinguish the notion of 'shared residence' from that of 'shared parenting' which, as Neale *et al.* (2003: 904) argue, can be 'defined by degrees of emotional support and collaborative working' that do not necessarily require that children also have to spend equal amounts of time with each parent. Perhaps most importantly, this 30–70 spectrum of residence provides a useful framework within which to explore the intersection of 'resident' and 'non-resident' parenting.

## Research rationale

It is this intersection that provides the backdrop for the rationale behind this thesis. At present, parents are divided upon separation into two discrete entities – one ‘with care’ (the ‘lone’ or ‘resident’ parent) and one without (the ‘absent’ or ‘non-resident’ parent) – which results in the establishment of gendered roles of ‘carer’ and ‘provider’ (via child support). However, little homogeneity surrounds non-resident parents as a group. Invariably, this term runs the gamut from those parents who have little or no contact with their non-resident children through to those who have been able to remain centrally involved in their lives. It may be unfortunate for this latter group that public policy appears to insist upon a *primary* – and by implication *secondary* – carer model of post-separation family life. Where the care and residence of the child is shared in more or less equal measure, a ‘non-resident’ status may not only be inappropriate in this instance but it may also lead to multiple levels of disadvantage, not only for the non-resident parent and their children, but also for any other members of that household. As Giddens (1998: 104) warns us: ‘[e]xclusion is not about gradations of inequality, but about mechanisms that act to detach groups of people from the social mainstream’.

In many respects, a lone–absent or resident–non-resident parent dichotomy, which runs as an undercurrent within institutionalised social structures at practically every level, may be acting as just such a mechanism, serving to obfuscate the realities of a shared residence model of family life. In the shared residence model, there exist two family units, indeed households, where neither parent is *de facto* ‘lone’ nor ‘absent’, where both require recognition, perhaps for a variety of reasons, as legitimate family forms with concomitant needs. These needs may be particularly acute within low-income households and may, additionally, serve to discriminate against this model of family life taking place at all.

Bradshaw *et al.* (1999: 80), referring specifically to non-resident fathers, explain how ‘certain barriers have to be overcome by the non-resident father if he is to maintain contact with his children – both practical and emotional – and they have to be surmounted in order for the non-resident father to be able to function cooperatively as a parent with his ex-partner’. Surmounting these practical and emotional barriers requires



negotiation. Yet what kinds of negotiation must fathers engage with in order to remain centrally involved in their children's lives to the extent to which they are able to adopt and sustain a shared residence arrangement? This negotiation takes the form not only of communication strategies between parents, children and wider kin networks, but also between a whole host of other mechanisms – social, legal and cultural in nature – that while perhaps not determining the way parties arrive at certain arrangements, may act to make certain outcomes more likely than others.

An exploration of these types of negotiation underpins the study. At the same time, the nomenclature of the lone-absent parent divide is brought into question by asking where a shared residence model of family life can be situated. It is, of course, important to recognise that these demarcations are, in the majority of cases, still reasonably clear-cut. Lone parent families today are a 'mainstream family type' (Rowlingson and McKay, 2002) and relatively low levels of contact – in relation to those of shared residence – together with high levels of disengagement of non-resident parents (e.g. Attwood *et al.*, 2003; Blackwell and Dawe, 2003; Bradshaw and Millar, 1991; Dunn, 2003) to a large extent reinforce these divisions. Equally, post-separation contact arrangements are various (Smyth, 2005) and do not necessarily remain static, making them hard to quantify.

Nevertheless, while shared residence may appear at present to be a minority practice it can no longer be seen as marginal. Indeed, there are indications not only that shared residence is prevalent as a proportion of the numbers of separated families but also that such practices may be increasing. In this respect, it is worth reflecting that non-resident parenting does not only affect fathers. While the numbers of non-resident mothers remain a small proportion of all non-resident parents they are not insignificant and have been rising, albeit by degrees, within Europe and internationally. In the USA, for example, the number of lone parent households headed by fathers tripled between the years 1980 and 1998 and according to the US Census Bureau stood at around 16 percent in 2002 (Grall, 2003). Kielty (2005), tells us that based on calculations from the 2000 Census data, there were approximately 135,000 non-resident mothers in Great Britain (ONS, 2001) – an increase of 12.5 percent since 1992. Arguably, this trend may become of increasing significance to the development, growth and acceptance of a shared residence model of family life. In particular, as the clarion calls from non-resident parent

lobbies – both fathers’ and mothers’ – for the facilitation of such arrangements begin to sound in unison.

The politicisation of shared residence has, in some measure, been driven by an increasingly vociferous – and international – fathers’ rights lobby (Collier and Sheldon, 2006; Rhoades and Boyd, 2004); in the main made up of non-resident fathers.<sup>1</sup> Yet despite the substantial interest in the concept of shared residence this focus has generated, relatively little is known within the European literature about how it functions in practice (see however, Smart *et al.*, 2001 in the UK; Neyrand, 2001a in France; and *extra*-Europe: Abarbanel, 1979; Bauserman, 2002; Braver and O’Connell, 1998; Brotsky *et al.*, 1991; Buchanan *et al.*, 1992; Irving and Benjamin, 1995; Krecker *et al.*, 2003; Maccoby and Mnookin, 1992; Mason, 2000 in the North American context; Fleming and Atkinson, 1999 in New Zealand; and Smyth, 2004 in Australia); in particular, about the relational and structural dynamics that exist in its negotiation and management. By *relational* I refer to the roles of and relationships between the various social actors involved; and by *structural* I refer specifically to the legal and policy frameworks within which it operates. These dynamics may also be played out differently within different national settings.

Within this context the need arises for a greater clarity of understanding concerning this evolving family practice. Consequently, the purpose of this thesis is to further our understanding of the ways in which fathers are managing shared residence arrangements for their children where parents do not live together. By drawing on a series of qualitative in-depth interviews carried out during 2005–6, I identify areas of complexity within which different models of shared residence are becoming established, with particular reference to the legal frameworks and social policies in two different national contexts, as well as the roles of and the relationships between the various social actors involved. Through a relational and structural analysis of what facilitates and what militates against this approach to family life, the thesis sets out some of the main challenges faced by fathers of parenting in multi-residence situations; challenges that hold wider purchase for all parents, whether fathers or mothers, whether non-resident or

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<sup>1</sup> The extent to which mothers, grandparents and women more generally play a part in such movements can often be overlooked. Arguably, an overarching focus on ‘fathers’ rights’ has overshadowed a wider, though less visible, concern over ‘family rights’.

resident. As well as bringing the resident–non-resident parent divide into sharp relief, the fathers’ narratives additionally serve to question the notion that men’s lives are centrally located in the *public* rather than the *private* sphere. The aims and objectives of the thesis have been thought out on the basis of the above research rationale.

## **Aims, definitions and scope of the research**

Set against the backdrop of family change, my thesis tackles the lack of previous research on shared residence, needed to benchmark a growing social phenomena, by examining how fathers are managing shared residence and responding to the different social and legal contexts within which such arrangements operate. A comparative research design not only allows us to discover how such practices manifest themselves within different national settings, it also enables us to see how different countries are responding to such developments.

### **Aims and objectives**

The specific aims of the thesis are:

- To identify what helps and what hinders fathers in adopting and managing a shared residence arrangement for their children where parents do not live together.
- To compare and contrast the similarities and differences that are identified in approach across two national settings.

The research aims are met through the following research objectives:

1. To compare and contrast the legal and social policy frameworks around shared residence in Britain and France.
2. To explore the lived reality of shared residence from fathers’ perspectives, with particular reference to:
  - (a) the different ways in which shared residence manifests itself;
  - (b) the relational dimension of fathers’ experiences of shared residence, which will look at: the roles of and relationships between the various social actors involved;
  - (c) the structural dimension of fathers’ experiences of shared residence, with regard to: the respective legal frameworks and social policies within each national setting.

### **Towards a working definition**

It may be appropriate at this stage to say a few words about the working definition of shared residence used within the empirical side of this research. Arguably, shared residence need not entail strictly equal divisions of time. Equally, too broad a working definition may obscure any sense that such arrangements represent any more than significant contact. It should be born in mind that such a definition in no way seeks to render a definitive guide as to what might constitute such arrangements but rather provide a framework within which to explore the intersection of resident and non-resident parenting. In this context, a 30–70 spectrum of overnight stays in percentage terms was felt to best represent the potential range in the division of the child's time resident across households over the year for the purposes of this study.

There are numerous reasons for establishing a reasonably wide distribution, not least among them a desire to capture the variety of arrangements that may exist over and above the 'every-other-weekend and half the school holidays'-type contact arrangements that appear to be so prevalent across many Western nations (e.g. Fleming and Atkinson, 1999; Maccoby and Mnookin, 1992). This model of contact underpins the notion of one primary carer, from which, it shall be argued, shared residence breaks. Even allowing for the significant differences that exist between the UK and France in terms of their respective levels of school holiday periods over the year, this model still falls outside the thesis-specific working criterion in each country and was therefore considered an appropriate starting point.

In addition, this distribution best allows us to witness the porous division that may exist between an official designation of a residence status and the actual time spent by the child resident in each household. It may well be that a parent's relationship to these apparently discrete 'resident'–'non-resident' divisions will change in relation to a particular social or legal property or 'variable'. For example, while one parent may, in law, be the resident parent (i.e. within the British context, through a s.8 residence order),<sup>2</sup> the possibility arises that the other parent may be the resident parent for the purposes of their child's schooling, or perhaps claim a form of child-related social

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<sup>2</sup> Scottish family law varies somewhat from that in England and Wales (the only unified jurisdiction within the UK). See Chapter 3 for a discussion of the private family law context within the UK.

assistance – such as Child Benefit – as ‘the parent with whom the child normally resides’ (Child Benefit Rules and Regulations, 2005), regardless of whether the child in reality has fewer overnight stays with that parent for the duration of the year. Thus, a 30–70 spectrum of residence allows a sufficiently wide ambit within which to explore these complexities.

It is, therefore, the amount of time spent by the child in each household rather than any official ‘residence’ designation that has informed the sampling criteria. As such, fathers within the sampling frame include both non-resident and resident fathers. In this way, not only are we best placed to capture this type of complexity but in so doing, glean insights as to the extent to which each parental designation (i.e. resident–non-resident) acts upon the negotiation and management of such arrangements.

### **Scope of the thesis**

Finally, the issue of shared residence, in particular over the past two decades, has become highly charged and given rise to prominent debates among judges, academics, pressure groups and policymakers over its respective merits and demerits (Rhoades and Boyd, 2004). It would be impossible, within the context of this thesis, to do justice to the multitude of ‘stakeholder’ claims and perspectives that hail from the broad spectrum of lobbies, organisations and agencies seeking to promote their own legitimate and unique takes on the broader issues of post-separation parenting. Therefore, it may also be appropriate, at this stage, to lay down several caveats.

First, while I endeavour to flag up and provide as rounded an account as possible of the key aspects and intricacies of conflicting discourse surrounding shared residence, it may be useful to remind the reader that the thesis takes as its starting point, not whether one should agree or disagree with the practice of shared residence *per se*, but instead the lived reality of this form of family life. Secondly, it should be borne in mind that it is fathers’ narratives, in contrast to mothers’ (Kielty, 2005) or childrens’ (Smart *et al.*, 2001), that are being privileged in the body and analysis of this text. Thirdly, the empirical component of the thesis is a relatively small-scale qualitative study and therefore should not be treated as a representative survey of all fathers with such arrangements. Indeed, it is not the intention of this thesis to generalise its findings to the wider population of post-separation fathers or, indeed, families. Rather, it intends to

shine a light on an evolving *practice* that has received very little attention to date and thereby contribute to a keener knowledge and more in-depth understanding of this family form.

## **Structure of the thesis**

The first four chapters introduce and contextualise the study. Individual chapter contents are broken down as follows: Chapter 2 traces the development of child ‘custody’ arrangements, helping us to understand the nature of shared residence and post-separation parenting more generally. It clarifies the terminology used within Britain and France and highlights the problems inherent in establishing any universal definition of shared residence by exploring the diversity of arrangements that may exist. The chapter looks at how prevalent this model of post-separation family life might be and may yet become, and ends by outlining key aspects of conflicting discourse that surround it.

Chapters 3 and 4 outline the legal and policy contexts within which shared residence currently takes place in Britain and France. These chapters explore more empirical aspects of shared residence arrangements by relating its practice to the development of social policies in each national context, as well as recent developments that have taken place in their respective systems of private family law.

Chapter 5 provides a discussion of the methodological strategy employed within the thesis. This looks at the research design and the process of data collection: including sampling procedures, how the definition of shared residence was operationalised for the fieldwork, accessing respondents and the interview process. This is followed by an outline and discussion of the respondent characteristics of the British and French sample groups, the ethical issues that present themselves for consideration, the use of the comparative method in conjunction with a qualitative approach and the possible implications of the methodology for the research findings. Finally, I look at the procedures and rationales involved in the data analysis together with some more general reflections on the nature of the researcher and the researched.

Chapters 6–9 present the overall empirical findings from the qualitative study, each comparing and contrasting any notable similarities and differences in approach cross-nationally: Chapter 6 outlines the different patterns of residence and ‘parenting schedules’ that respondents have adopted, thereby revealing the complexity within which these arrangements are managed. This is followed in Chapter 7 by an analysis of the relational dimension of the practice of shared residence, providing insights into the family practices that surround this type of engagement from the father’s perspectives. It explores aspects of how care patterns are negotiated, principally with regard to the children’s mothers: deciphering the ways in which these relationships impact on arrangements in terms of patterns of communication, flexibility and conflict reduction strategies. It looks at the extent of wider practical and emotional support, in particular through the input and influence of new partners and extended kin networks, as well as examining what part the children themselves play in the way arrangements unfold.

Chapters 8 and 9 provide an empirical reflection of the legal and policy analysis in Chapters 3 and 4, where fathers describe, in their own words, how arrangements have been negotiated and managed in ‘the shadow of the law’ and how policy mechanisms affect the negotiation and organisation of shared residence on the ground. In Chapter 8, parenting practices and residence arrangement are viewed in respect of decision making, the extent of private ordering and in terms of legal and conciliatory frameworks; thereby highlighting the relationship between shared residence and family law, family mediation, private ordering and the state.

Chapter 9 looks exclusively at how financial considerations, social and welfare policies and questions of non-residence impact on a shared arrangement in terms of structural policy considerations such as housing, the allocation of benefits and financial transfers (such as child support) across households. It examines the relationship between employment and caring responsibilities as well as the influence of wider cultural and official recognition, for example, in relation to school life and wider professional recognition and interaction.

The thesis ends in Chapter 10 by linking the overall research findings to the main aims and objectives of the thesis. The chapter begins with a summary of the key findings, comparing and contrasting these cross-nationally. Similarities and differences in

approach are highlighted that also point to both the strengths and limitations of the research. Reflecting on the theoretical and policy implications of the study, I draw out some pertinent questions and challenges for consideration with respect to family law, policy and practice and make some suggestions for the future direction of research in this field. The chapter ends with a concluding discussion that asks whether the practice of shared residence brings the nomenclature of a resident–non-resident parent divide into question.



## Chapter 2

# Understanding shared residence

### Introduction

Current trends within major post-industrial societies relating to contemporary family restructuring suggest that increasing numbers of children are spending significant amounts of time alternating their home life across two households. The principle of ongoing contact between children and biological parents set out within international private law mechanisms reflects the fundamental principles embodied within International Conventions and Human Rights Declarations that concern ‘rights’ in relation to *inter alia* family life, identity, protection and empowerment. Article 9 (para. 3) of the UN International *Convention on the Rights of the Child* 1989 (CRC), declares that:

States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child’s best interests.

Where they are not already entrenched, these principles are in turn filtering down through, and becoming reflected within, national domestic laws.

In Britain and France the notion of ‘parental responsibility’ and that of *l’autorité parentale conjoint* (joint parental authority), generated in the UK by the introduction of the *Children Act* 1989,<sup>3</sup> and in France through *la loi Malhuret* 1987,<sup>4</sup> respectively, have contributed in large part to the ‘substitution’ or ‘social’ model of reconstituted family

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<sup>3</sup> Generally, the Act applies only to England and Wales (though there are some exceptions and a number of consequential amendments were made to the law in Scotland and Northern Ireland). In Scotland, the current law, found in the Children (Scotland) Act 1995 (c36), provides for a range of parental responsibilities and rights (PRRs), that largely mirror those of the Children Act 1989.

<sup>4</sup> Although the French *loi du 4 juin* 1970 introduced the notion of parental authority, it was not until its reform in 1987 that the notion of *coparentalité* equalised, for the first time, the exercise in common of parental authority by both parents, post divorce.

life being replaced by a ‘durability’ model (Théry, 1989). In other words, the continuation of parent–child involvement post separation has put into question prior notions of step-parenthood as a form of replacement parenting in any simple or straightforward manner. Perhaps most importantly, the cultural influence of psychological interpretations of the ‘best interests of the child’ principle, underpinning these developments (which provides that in all actions concerning children within public or private bodies or institutions, the best interests of the child shall be a primary consideration [Art.3, CRC 1989]), has led to a ‘cultural consensus’ across most Western nations surrounding the principle of ‘joint custody’ as the best alternative for children post separation or divorce (Kurki-Suonio, 2000).

This chapter begins by tracing developments in child custody arrangements over the twentieth century from a ‘maternal preference’ to ‘joint custody’ and argues that shared residence is currently developing as a second and arguably separate model, outwith the joint custody ‘ideal’. There are two points of clarification that must be addressed here as regards terminology: first, the term ‘custody’ is no longer used within the British or French family law context, having been brought into question through a severance of notions of parental responsibility/*l’autorité parentale conjoint*, respectively, from that of the residence of the child; secondly, that while the notion of shared residence has been captured within this model (in some jurisdictions) through the concept of ‘joint physical custody’, it is nevertheless important to distinguish these two terms. While shared residence implies a more or less equal sharing of the day-to-day residence of the child between parents, the central tenet of *joint custody* rests in its breaking with the notion of *sole custody*, and reflects instead what amounts to a ‘primary carer’ (or primary residence) model in practice. This model, though characterised by ongoing rights and responsibilities for both parents, entails one parent, most usually, though by no means exclusively, the mother, becoming primary carer for the child while the non-resident parent, most usually the father, will have ongoing rights (to contact and to be informed and consulted over important issues) and responsibilities (via child support) towards them.

The chapter goes on to discuss the problems associated with defining such an arrangement and suggests that competing definitions act as more than mere descriptive sociological tools, being in fact, deeply political. The framework of shared residence is

examined as it relates to the overall thesis, together with some empirical findings concerning patterns of residence and the extent to which it may be possible to gauge the prevalence of such arrangements.

Finally, how children are cared for following the separation of their parents can be seen historically as an organic process that has been the subject of protracted legal and policy debate over centuries. Yet few issues have exercised such strength of feeling or tended to polarise opinion so much as that of shared residence. As such, key features of conflicting discourse are outlined in order to best contextualise the research and the position of fathers in the management of such arrangements.

## **Constructing residence over time**

### **From maternal preference to joint custody**

Looking back across the twentieth century, it is possible to discern three distinct child custody models (Fineman, 1988) or ‘ideals’ (Kurki-Suonio, 2000) that have flowed from situations of parental divorce and separation, namely: 1) *maternal preference*; 2) *the psychological parent*; and, more recently, 3) *joint custody*. While these models can be said to have occurred successively across most Western societies – albeit with clear national differences apparent in the timing of change – elements from preceding models have in many cases been carried over, making it likely that aspects of two or more of the models were running concurrently. In England and Wales, for example, maternal preference continued to operate alongside a *status quo* principle, which stressed the importance of continuity in child care. Confirmed in *J v C* [1970] AC 668 (see, e.g. Eekelaar *et al.*, 1977; Maidment, 1984), the judgement amounted in essence to gender neutrality; in this way, maternal preference and psychological parenthood (or ‘sex-neutrality’) could not be seen to be in contradiction with each other. Nevertheless, despite clear overlaps, the fundamental substance of these models has remained consistent.

1. *Maternal preference*, the first of these models, developed around the idealisation of motherhood. Based upon the theories of Sigmund Freud (1905, 1953), who supported a

gender-specific division of parental responsibilities, this model was linked to the assumption of a strong maternal instinct in all women and founded upon the perceived natural, universal and unchanging nature of the maternal role (Glenn, 1994; McGlynn, 2000; Wallbank, 2001). Under these conditions, securing the mother–child bond was considered paramount for the healthy emotional, physical and psychological development and wellbeing of the child (Bowlby, 1952, 1953; Winnicott, 1957; see also Bretherton, 1991); in particular, of very young children and babies – the so called ‘tender years’ doctrine. It was an idea that stood in opposition to the *father right* (e.g. Maclean and Richards, 1999; Maidment, 1984) that had characterised Western nations at the turn of the twentieth century. During the nineteenth century, fathers – of ‘legitimate’ children – held absolute legal rights over them. Separated or divorced women, in particular those who had committed adultery, could expect to be denied contact with their children. Subsequent moves towards a maternal preference developed into a situation where mothers could acquire full custody rights after divorce. These rights were increasingly realised during this period as the maternal preference model became tied to the emerging doctrine of ‘the child’s best interests’, and later with the gradual introduction of no-fault divorce legislation.

2. *Psychological parenthood*, the second custody model or ‘ideal’, that emerged during the 1970s, was based upon aspects of both the psychological wellbeing of the child and the increasing importance being attached to equal opportunities; and by implication, gender neutrality. Grounded in psychoanalytic theory, introduced by Goldstein, Freud and Solnit (1973) in their influential publication *Beyond the Best Interests of the Child*, this model, and the legal practice of *sole custody* attached to it, stressed the importance of continuity in childcare regardless of the sex or status of guardianship. Indeed, the authors argued that:

The non-custodial parent should have no legally enforceable right to visit the child, and the custodial parent should have the right to decide whether it is desirable for the child to have such visits. (1973: 37–8)

However, although either parent could in theory be chosen to be the custodial parent, this ideal never led to equality between sexes as custodians in practice, as mothers overwhelmingly maintained their status as primary carers following family breakdown.

Therefore, the legal reforms that took place surrounding this model amounted, in effect, to no more than ‘an official policy of sex-neutrality’ (Kurki-Suonio, 2000: 186). It is of note here that the political upheavals in French society which stemmed from the 1968 student uprisings appear to have motivated a more immediate and high-profile questioning of the traditional roles of men and women than was evident in Britain (Ferguson, 1988; see also Le Gall, 1974). Indeed, studies of the paternal role carried out in France at this time depict a greater rejection of traditional gender-specific parental roles (Jacquey, 1977) than were apparent in Britain. This included a greater paternal involvement in the care and upbringing of younger children (Bouchart-Godard, 1976).

Despite its minimal impact on legislation, however, the cultural influence of psychological interpretations of the ‘best interests’ principle was to profoundly affect the notion of sole custody and, latterly, court practice in child custody decisions in both Britain and France. The ‘social’ models of parenthood began to be replaced by a third, ‘biological’ model – that of joint custody.

3. The *joint custody* model was linked to a non-judicial approach to divorce; witnessed in the rise of mediation provision in those countries adopting such a model (Beajot and Liu, 2002). This model found support through research stressing the importance for parties to be able to end their relationships as partners while continuing to cooperate as parents of their children (Wallerstein and Kelly, 1980).

Impelled by a re-evaluation of the contribution made by fathers in terms of child development (e.g. Lamb, 1981) and better overall outcomes for children both in the short and long term, where children were able to have a continuing relationship with both parents despite their separation (Richards, 1996; Rodgers and Pryor, 1998), such findings represented an empirical rebuttal of the assertions of Goldstein *et al.* (1973) and arguably made a thorough reappraisal of family law inevitable (Richards, 1986). This reappraisal was evident in both Britain and France. Commentators such as Elkaïm (1981), writing in the French context, began to highlight the need for greater equality for nurturant fathers with regard to child custody decisions in divorce cases. As child welfare legislation developed, the importance of the birth family and the right of the child to have continuing contact with both parents became increasingly acknowledged (James and Richards, 1999).

### **The biological and the social: tensions and contradictions**

Thus, the status of this third ‘joint custody’ model derives not from the legitimacy of marriage but from the preservation of biological ties between parents and their children. This *coparentalité*, as the French have styled it, has increasingly come to hold the same purchase whether based on marriage, cohabitation or through co-parenting arrangements where parents have never lived together. Recent reforms in England and Wales, for example, have meant that since December 2003, automatic parental responsibility is now granted to unmarried fathers who jointly sign the birth certificate of their children with their child’s mother, irrespective of whether the parents have ever lived together.<sup>5</sup> In France, the concept of *coparentalité* (or co-parenthood) introduced in 1987 for married couples was extended to *parents naturels* (unmarried parents) as long ago as 1993, and since *la loi du 4 mars 2002* (the recent French reforms of parental authority), *l’autorité parentale* applies to all fathers where paternity is established within one year.

Neale (2000: 6) indicates that ‘parenthood has begun to supersede marriage as the bedrock of the family and as the central mechanism for the legal regulation of family life’. Indeed, it is this idea that underpins the notion of ‘parentalism’, as outlined by Sabine Rivier (2002): a process in which the relationship between children and their two parents currently regulates family relations, family risk and the division of family work; where parenthood has become a new ‘theoretical’ unit for a new mode of social regulation.

This notion of parentalism arguably allows us to refer to this model of family life as a bi-nuclear one, since despite an increasing recognition of the diversity of ‘unclear’ family arrangements (e.g. Pryor and Rodgers, 2001), where children are concerned, regulation nevertheless insists on turning, in the main, on a biological parent–child axis. The evolution unfolding of child custody arrangements coupled with the continuing rise in numbers of parental separation, has meant that the nuclear family, despite its decreasing status as a singular family construct, nevertheless, appears to be reinventing itself, to some extent, as a ‘bi-nuclear’ family spread out across households (Ahrons and Rogers,

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<sup>5</sup> In Scotland, s.17 of the Family Law (Scotland) Bill (February 2005) also provides that unmarried fathers acquire PRRs where their name is registered on their child’s birth certificate, on or after the date the legislation commenced. In neither Scotland nor England and Wales is the reform retrospective.

1987; Neale, 2000). Within this context, divorce and parental separation, are coming to be understood as a transition, rather than an ending: ‘recast as just one stage in a newly extended life course for the indelible biological family’ (Neale, 2000: 6).

It is, of course, important to recognise that the ‘lone parent’–‘reconstituted family’ model, which was prevalent in the 1960s and 1970s ‘... is still a viable form of family life following parental separation both from the parent’s and the children’s point of view’ (Neale *et al.*, 1998: 16). This is also still very much in evidence within the legal framework. In England and Wales, the position in *Re H (Shared Residence: Parental Responsibility)* [1995] 2 FLR 883, was that the mother’s husband was not the father of the elder son of the family but he had accepted the boy as his own. The Court of Appeal held that in these circumstances it was appropriate to make a shared residence order for the purposes of conferring parental responsibility on the husband. Similarly, in France, one of the three main principles in proceedings involving children provide that emphasis must be placed on the *biological* and *social* aspects of parentage (Civil Code, 311–1). For example, when establishing parentage, recognition must be given to the fact that a parent has treated the child as his or her own child or was publicly known to be the child’s parent.

Nevertheless, clear tensions exist between social and biological parenthood that arise from the joint custody ideal (Edwards *et al.*, 1999) and from the fact that a step-parent would traditionally have had a very different function, as for example when marriage was broken by death. It may be significant, for example, that it is becoming recognised that it is rare for children to continue to have active relationships with their parents’ ex-partners (Allan *et al.*, 2001). These tensions are played out in often seemingly contradictory ways. For example, in the Family Law (Scotland) Bill (2005), the proposal that a step-parent should be able to register an agreement with both the natural parents of the child in order to acquire ‘parental responsibilities and rights’ (PRRs) without going to court was roundly rejected, reinforcing the notion of the biological over the social. Yet, the recent case of *Re G (Residence: Same-Sex Partner)* [2005] EWCA Civ 462, [2005] FLR, where a shared residence order was made in order to bypass a perceived statutory lacuna in the *Children Act* 1989, which prevented the court from granting parental responsibility to a step-parent of the same sex as the children’s birth mother has, paradoxically, given step-parents a much stronger case for obtaining a shared residence

order than birth parents. Although this result is likely to have been an unforeseen consequence of the Court of Appeal decision, *Re G* nevertheless sends a clear message that important bonds can develop between children and step-parents, and that whether married, unmarried or in same-sex relationships, where *de facto* family ties have developed, these relationships should be recognised, nurtured and preserved (Arnot and Harte, 2005).

### **Joint ‘physical’ custody: an integral aspect of joint custody or a model apart?**

Crucially, within this third model of joint custody, we are able to distinguish joint ‘legal’ custody from joint ‘physical’ custody. The former refers in general to a situation in which one parent (generally the mother) becomes the *primary carer* (resident parent) of the child but important decisions concerning the child’s welfare can be made together. Characterised by ongoing rights and responsibilities, arrangements as regards the *secondary carer* (non-resident parent) may include: contact (typically comprising ‘alternate weekends and half the school holidays’, e.g. Dewar and Parker, 1999; see also Lye, 1999; who suggests these arrangements act as a default model, resulting from a lack of awareness by parents and those they go to for advice of feasible alternatives); the right to be informed and consulted regarding important issues surrounding the child’s future; and ongoing financial maintenance payments until the child reaches a prescribed age, usually set at a higher threshold for those still in full-time education. Smyth (2005), writing in the Australian context, identifies this as the ‘standard’ model of contact.

Joint ‘physical’ custody, on the other hand, reflects a situation in which both parents share the day-to-day care and residence of the child. Albeit with intrinsic variations to its character, the joint ‘physical’ custody model, in contrast to those that have come before it, encompasses *for both parents*, all three aspects of obligation that make up the rights and responsibilities of parents towards their children: namely, ‘guardianship (to make decisions on their behalf); custody (to look after them on a daily basis) and maintenance (to financially support them)’ (Millar and Warman, 1996: 32).

Kurki-Suonio (2000: 200) tells us that ‘the distinction between joint legal and joint physical custody has very little, if any, importance respecting the ideal of joint custody’. Certainly, if we take the reinforcement of the parent–child bond at the expense of the



spousal or parental bond as our starting point, this observation is apposite. However, since these dual aspects of joint custody, in practice, carry considerable differences as regards the ways in which ‘family life’ is considered, the distinction is of quintessential importance, as is a deeper understanding and more complete account of their affiliation.

While joint custody can be said to have laid the groundwork for such a model through the concept of shared ongoing responsibility by both parents for the child, shared physical custody *in practice* arguably represents as radical a distinction from joint legal custody *in substance*, as maternal preference has done from psychological parenthood (those models that have preceded them). In contrast to joint legal custody, which leaves a split-family–separate-roles infrastructure intact, joint physical custody brings into question the very structure upon which post-separation family life has traditionally been played out; namely the lone–absent parent divide and the central division of gendered roles of carer and provider that derives from it. Thus, the less marginal this practice becomes the more it will become necessary to consider it as a second, and arguably separate model outwith the joint custody ideal, if we are to respond adequately to such developments and the concomitant needs of families.

### **From custody to residence**

Up to this point, reference has been made to aspects of custody models. The term ‘custody’ is still one that is widespread and well understood in much of Europe and North America (Beaujot and Liu, 2002), as is the term *garde* (custody) within many French-speaking countries. However, having been rejected in France and Britain, the concept of shared ‘physical’ custody has been replaced with that of shared residence – or *résidence en alternance* (alternate residence) in the French context – while that of joint ‘legal’ custody has been replaced by that of parental responsibility (*l’autorité parentale*) and is described within the context of this thesis as ‘shared parenting’. This latter demarcation is somewhat problematic, in the sense that the term ‘shared parenting’ has largely become equated, through the ‘shared parenting movement’ and consequentially the media, with the practice of shared residence (joint ‘physical’ custody). However, as discussed earlier, since the term carries with it degrees of emotional support and collaborative working that do not require children to reside across two households in more or less equal measure (Neale *et al.*, 2003), it is more appropriate, within the context of this thesis, to distinguish the two terms in this way.

As these dual aspects of this model of family life evolve, the focus of research attention has also begun to move away from exploring fatherhood solely in financial terms of child support, and the notion of the ‘absent parent’ connected to it, is to a large extent being replaced by one of ‘non-resident’ parenting (e.g. Bradshaw *et al.*, 1999). In some measure this change in focus has been driven by ‘an increasingly vocal, visible and organised fathers’ rights movement’ (Collier, 2006: 54). Rhoades and Boyd (2004: 137), for example, argue that ‘the impetus for . . . recent [family law] reform inquiries in Canada and Australia was agitation by fathers’ groups for a legislative commitment to equal custody following divorce’. Indeed the ‘shared parenting movement’, which tends to form the central plank in fathers’ rights movements more generally, is an international phenomenon and the issue of shared residence has moved up the political agenda in a number of jurisdictions around the world, including Denmark and Portugal within Europe, and Australia, Canada, the USA and Hong Kong, *extra-Europe*.<sup>6</sup>

In this climate, both French and British governments have been under increasing pressure to become more proactive in their approaches to the issue of post-separation parenting. Indeed, lobbies within France (e.g. *Justice Papa*, *SOS Papa*, *L’Enfant et Son Père*, *La Fédération des Mouvements de Condition Paternelle*) and those within Britain (e.g. *Families Need Fathers*, the *Equal Parenting Council*, the *Association for Shared Parenting*), fuelled by the growth in such mother-based groups as MATCH (*Mothers Apart From Their Children*), together with more militant and activist demonstrations by self-styled ‘suffragent’ groups such as F4J (*Fathers For Justice*) (reportedly now disbanded in the UK by its founder, Matt O’Connor) are suggesting that the arteries of legal and social policy have been allowed to clog. As this constituency has become more vocal and mainstream – as, for example, championed by such celebrities as Sir Bob Geldof (2003) – the more information has needed flushing out and ordering. Indeed, as debate intensifies around the split-family scenario, more is beginning to be known about the circumstances (Bradshaw *et al.*, 1999; Neyrand, 2001a; Simpson *et al.*, 1995), experiences (Wilson, 2003; Wilson *et al.*, 2004) and expenditures (Bradshaw *et al.*, 1999; Fabricus and Braver, 2003, 2004; Henman and Mitchell, 2001; Woods, 1999)

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<sup>6</sup> It should be noted, that Collier and Sheldon (2006: 4–5) have pointed to the problematic nature of depicting the groups’ primary or sole aim as the promotion of a fathers’ legal rights agenda, given their significant non-campaigning role, offering practical and emotional support to its members.

of ‘non-resident’ parents, of whom fathers make up the vast majority. These are, nevertheless, raw grey areas in terms of definition and benchmarking for policy that makes up the background to the research behind this thesis.

## **Defining shared residence**

### **More than a label?**

Distinguishing the many and varied labels that describe an arrangement in which a child physically resides for significant, if not strictly equal, periods of time with each parent (most usually across households)<sup>7</sup> is perhaps not as straightforward as one might imagine: ‘joint custody’, ‘shared parenting’, ‘equal access’, ‘parenting time’. Certain terms are notoriously problematic and the notions used to describe relationships between individuals often prove the most exacting. Since language does not simply reflect or describe reality, but plays an intrinsic part in its construction (Fairclough, 1992), terminology becomes more than a mere descriptive sociological tool, it is also deeply political, acting to demarcate certain boundaries. In addition, it should be borne in mind that the terms used to describe arrangements within different jurisdictions may also lead to certain levels of confusion, since they are very likely to carry different meanings and practical implications in different countries (DfES, DCA and DTI, 2004: at para.76).

The need to distinguish the notion of shared residence from that of shared parenting has already been highlighted and may be of particular significance in policy terms. Smyth and Ferro (2002), for example, draw our attention to ‘when the difference is night and day’, and the relationship between care and staying contact (see also, Parkinson and Smyth, 2003). However, the point at which we are able to say that one arrangement is demonstrably a case of shared residence while another may be one of shared parenting *per se* is not at all clear. As we shall see in Chapter 5, this depends very much on the context when asking what difference in value, if any, should be placed on one arrangement over the other. It also becomes necessary to ask whose definitions are being privileged. Neale *et al.* (2003), for example, argue that the term ‘shared residence’ adopts an adult-centred perspective of this type of arrangement, whereas ‘dual

residence’ may reflect a more accurate, more child-focused term. Their argument is clearly more than a question of semantics, since it is an ‘adult-centred’ focus that Neale and Smart adopt as their main critique of shared parenting more generally (Smart *et al.*, 2001).

Taken from the child’s perspective, ‘dual residence’ would indeed appear to be a more accurate and sensitive reflection. Indeed, a similar argument can be seen to have played some part in the adoption of the term *résidence alternée* (alternate residence) within the French context, inasmuch as the change from *garde alternée* (alternate custody) to *résidence alternée* within the legal framework arguably prioritises the residence of the children above their parents who have *garde* (custody) over them, thereby affirming the principle of the child’s best interests above those of their parents.

Nevertheless, while adults may negotiate a dual residence for their children, for themselves they are taking part in and sharing that dual residence. They share the parenting and if substantial amounts of time are spent by the child residing with each parent they are also *sharing* the residence of their children. Within the legal framework, section 11(4) of the *Children Act* 1989 specifically contemplates a shared residence order being made to both parents despite the fact that they live apart. For these reasons, the term ‘shared residence’ now widely employed in current social discourse is used throughout the thesis, while bearing in mind that the terminology used should arguably reflect the focus and the context.

Within France, terminology has been no less varied or problematic. The term *garde alternée* remains current and universally understood by the wider public in France (Neyrand, 2001b). The term *garde partagée* (shared custody) is still widely used in French-speaking Canada. This is perhaps not surprising given that Canada and the USA still make references to joint custody, both ‘legal’ and ‘physical’. However, since *la loi Malhuret* 1987 brought the notion of *garde* into question through a severance of the notion of parental authority from that of the residence of the child, other terms have become more widespread. For example, *résidence partagée* (shared residence), *double maison de l’enfant* (dual home of the child), *temps partagé* (shared time), or with

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<sup>7</sup> There are instances where it is the parents that alternate their home life to accommodate the child’s one home (see section on ‘patterns of care’ in this chapter for a further discussion, p.40).

respect to more legal terminology, *hébergement partagé* (*hébergement* literally translates as lodging or dwelling).

In France, the term *hébergement alterné*, used in the influential Théry (1998) and Dekeuwer-Défossez (1999) reports, which underpinned the recent 2002 reforms of parental authority, more closely resembles notions of ‘staying contact’. This arguably reflects the importance the French have placed until relatively recently on the need for a unique administrative domicile. Despite the adoption of joint parental authority under the legal reforms of 1987, a French judge was still obliged to fix the residence of the child with one parent. In this sense, the term would appear to be more juridical than sociological or psychological, acting to conjure up more nomadic images of the child, forever wandering from one house to the next, unable to set down roots. Since the introduction of *la loi du 4 mars 2002*, the term *résidence en alternance* has officially entered into the language of the French Civil Code and become increasingly used within official French publications. French law now talks in terms of *l’autorité parentale conjointe* (joint parental authority) in a theoretical sense, and of *résidence alternée* in practice.

Thus, terminology works to construct our perceptions of a given arrangement or group of persons in ways that are deeply political. Bolderson and Mabbett (2002), highlight how a category’s boundaries should be able to be drawn readily and consistently by administrators in order for it to be seen as successful. Shared residence arrangements may be hard to compartmentalise in this way. As indicators of a ‘successful’ category, the authors propose:

The ease with which categories or cases are identified, the viability of the exclusions which must be made in the process, legitimacy (whether members of the category are seen to deserve their membership) and the perceived ‘fit’ between need and membership. (Bolderson and Mabbett, 1991: 15)

The category of shared residence, at present, represents something of a challenge to policymakers. While a recognition of such arrangements appear to have seeped into the legal frameworks of Britain and France, as well as the wider public consciousness, there remains little consensus or understanding of what shared residence entails. It becomes

necessary therefore to define its framework more clearly, and in particular the variety of arrangements that may exist under a shared residence banner.

### **Patterns of care**

The precise arrangements families adopt will vary according to individual family circumstances, perhaps over and above personal preferences; for example, as regards the geographical proximity of homes, working practices, financial restrictions and so on, in terms of structural considerations, and presumably, the quality of inter-parental and parent–child relationships as regards more relational ones. In Britain, an emphasis on non-intervention, or ‘private ordering’ (discussed further in Ch. 3), means that the extent of shared residence together with variations in the way patterns of care develop are largely unknown. Section 11(4) shared residence orders are unlikely to be a good indicator other than as a judicial reflection, since if parents are in agreement (a general requirement of the order) then it seems plausible that they will have come to some arrangement without going to court. Indeed, the *Children Act 1989 Guidance and Regulations* state that in many cases where shared residence is appropriate, it is less likely that there will be a need for the court to make an order at all (Department of Health, 1991: 10, para. 2.2[8]).

In the British context, the lack of qualitative data surrounding shared residence means that more specific knowledge about what these types of arrangements might entail must be drawn out from more generalised studies and surveys into post-separation contact. In France, a general dearth of court statistics and census information surrounding post-separation parenting has also made it hard to quantify the various ways in which such arrangements are played out. Nevertheless, several commentators have begun to look more qualitatively at the different types of shared parenting patterns that may exist (e.g. Poussin and Lamy, 2004; Cadolle, 2004).

While a multitude of arrangements are likely to exist, most will fall into certain patterns or ‘cycles’ of care. Most typically, though by no means exclusively, an alternating residence model of family life will rotate over a one- or two-week cycle, which is then repeated, varying to some extent during holiday periods and festive, religious or special occasions such as Christmas, New Year, birthdays or wider family gatherings and events.

For some, this may include alternate weeks or ‘week-about’ arrangements, where children will alternate between homes on a weekly basis, and where parents take on the primary responsibility for the child for the duration of that week. This particular form or model of shared residence appears to be extremely popular among this relatively distinct subgroup of separated and divorced parents. Smyth (2005), for example, found in a recent Australian study of five different post-separation patterns of parenting (total n=56), that virtually all the parents in the ‘shared care’ focus groups, made up of seven fathers and five mothers respectively, had not only adopted shared residence arrangements from the time of separation but that these typically revolved on a ‘week-about’ schedule.

**Table 2.1** Division of definitive<sup>†</sup> judicial decisions in France pronounced by judges hearing family cases (*JAF*), 13–24 October 2003, by mode of shared residence and by age of child<sup>a</sup>

<b>Pattern of care<sup>b</sup></b>	<b>Age 0–4 n=136 as %</b>	<b>Age 5–9 n=162 as %</b>	<b>Age 10–14 n=80 as %</b>	<b>Age 15 + n=30 as %</b>	<b>Total n=408 as %</b>
Alternate weeks	76	81	79	82	79
<i>À la carte</i> division of care according to detailed parenting plan <sup>c</sup>	16	12	8	9	12
Every two weeks	7	2	8	0	5
Undetermined pattern of care	2	4	6	10	4
Other	0	1	0	0	1

*Source:* Based on figures cited in Moreau *et al.* (2004), taken from *Ministère de la Justice – DACS – Cellule Etudes et Recherches – Enquête “Résidence des enfants” octobre 2003*.

*Notes:* <sup>a</sup> Where there is more than one child, figures denote the age of the youngest child. <sup>b</sup> All figures have been rounded up. Each age cohort by pattern of care may not, therefore, add up to exactly 100 percent; <sup>c</sup> An *à la carte* pattern of care still involved equal divisions of time in nearly 80 percent of cases.

<sup>†</sup> These figures denote the total number of definitive judicial decisions (n=408) as opposed to provisional measures (n=272). See pp. 75–6 for a further discussion of this type of provisional measure or ‘trial period’.

Indeed, in France, shared residence appears to some extent to have become equated with such a model. When we look at recent statistics from the French Ministry of Justice (Table 2.1) we see that since *la loi du 4 mars 2002* came into force, when shared residence is applied for in the courts (at present around one in ten of all procedures concerning contact and residence of the child): '*L'alternance hebdomadaire est retenue huit fois sur dix*' (weekly alternate residence is granted eight times out of ten) (Moreau *et al.*, 2004: 6). Table 2.1, documents the division of definitive judicial decisions by different patterns of shared residence. In addition, it shows the pattern of care adopted relative to the age group of the child. It is significant that weekly alternate residence in France does not change appreciably according to the child's age, remaining at above 75 percent of all children in each age category.

These statistics are unique in that they are the first of their kind to be produced in France and were made possible as a direct result of the legislative changes that took place in March 2002 (discussed further in Ch.3). In Britain, such statistics are as yet unobtainable given the framework within which family law currently operates. What we do know is that from the evidence that is available, patterns of care – in particular as regards the length of residence in any one household – vary significantly from those in France. Bradshaw *et al.* (1999), found that the most common 'shared care' arrangement in their UK sample of non-resident fathers was for the child to spend half the week with the father and half the week with the mother. There is some evidence that shorter periods of residence are more common with younger children. Some arrangements may even rotate on a near-daily basis. Other arrangements may include weekdays with one parent and weekends (with perhaps extended holiday periods) with the other. This type of arrangement may also include overnight stays during the week. Indeed, Bradshaw *et al.* (1999) identified this as the second most common 'shared care' arrangement in their sample. For the number of overnight stays to exceed 104 during the year (the authors' definition of such arrangements for the purposes of their study), children would generally stay one night in the week, and then every weekend, or every other weekend.

Unfortunately, there exists a general dearth of research into post-separation residence arrangements. The finer details of such arrangements are often lost within more



generalised surveys into contact. It is, nonetheless, worth recounting the evidence that does exist around contact frequency. Although contact differs from residence or overnight 'staying contact', it does give us some indication of the direction in which care arrangements and shared parenting, more generally, are moving. For example, allowing for variations in sampling, recent studies report the most common form of 'contact frequency' as taking place during each week (Trinder *et al.*, 2005). Blackwell and Dawe (2003), for example, report weekly contact for between a third and a half of children, while even higher levels are reported in Walker *et al.* (2004), at 62 percent. It is unfortunate that a more detailed picture of arrangements at this end of the contact scale were unable to be ascertained. Indeed, these studies reflect a more general failing of research regarding post-separation contact to establish the more detailed arrangements children are party to where contact is reported as taking place on such a regular basis (i.e. at least once a week). Contact taking place for two or three hours on a Saturday afternoon is likely to result in very different needs for families from contact taking place over a two or three night block each week. It is also the case that terms such as 'daily' and 'weekly' are often combined into a single category, again resulting in an inability to capture the finer complexities of care arrangements.

Returning specifically to patterns of residence, there are also instances in which it is the parents who alternate their own residence to accommodate the child's one home. This process, commonly referred to in the UK as 'nesting', has been promulgated by fathers' groups such as *Families Need Fathers*. It has also been suggested as a viable and perhaps more child-centred option by Sir Bob Geldof (*Geldof on Fathers*, Channel 4, 2004). The celebrated French psychoanalyst Françoise Dolto (1988) also appears to endorse such a model in her influential publication *Quand les parents se séparent*. However, Cadolle (2004) suggests that this arrangement is put forward by Dolto purely as a means by which to make adults reflect upon the potentially awkward nature of the arrangement for the children themselves. This particular arrangement, as well as a general discussion of the different models of shared residence fathers in the French and British samples have adopted, takes place in Chapter 6.

### **Residence over time**

There can be a tendency to think of arrangements as being somehow fixed in a permanent way. This masks the complexity of shared residence and contact more

generally, which is more of an on-going process of negotiation. An alternating residence arrangement may more often than not be an evolving one and not 'static'. What may suit children at eight-years-old may not be so appropriate at eighteen. Smart (2004: 487), in her study of children's experiences of 'co-parenting' explains how, '[f]or most of the young children (i.e. under 10 years) we interviewed in 1998 an equal sharing arrangement was often described as ideal. It meant that they [the children] could still have two "proper" parents and they also thought it was fair'. However, a more flexible approach 'became particularly vital as children grew older and their needs and interests changed'. Neale *et al.* (2003: 906) distil the key elements that contribute to successful shared residence arrangements in their follow-up study of childrens' experiences of such arrangements: 'the needs of children were prioritised; there was flexibility over arrangements; and children could feel settled or felt truly at home in both households'. By contrast, where arrangements were problematic for children: 'the needs of parents were prioritised; there was inflexibility over arrangements; and children did not feel settled or felt like visitors or lodgers in one parent's house'. The authors describe how, as children got older, they were inclined to see a rigid shared residence formula as burdensome and therefore 'problematic for the lives of some children and young people' (ibid.: 905).

Other commentators also suggest that flexibility and the ability to accommodate other parts of their lives, such as social activities, may be particularly important to older children, while for younger ones, it is frequency and regularity that is of importance (Hunt, 2003; Hunt and Roberts, 2004; O'Quigley, 1999). Smart (2004: 488), also recalls from her 1998 interviews that: 'Up to the age of around 10 or 11 years, most children seemed content to have arrangements made for them, and the routine that they established was very important'. The notion of *flexibility* as it relates to one of *consistency* is a theme that will be taken up in the empirical section of the thesis.

## **How prevalent is shared residence?**

Data on the actual prevalence of shared residence remains somewhat inconsistent and partial. Skinner *et al.* (2007), in their international study of child support policy within

14 different countries,<sup>8</sup> asked specific questions of national informants about ‘shared care’ – defined as, situations where children spend ‘roughly equal amounts of time living with each parent’ (ibid.: 3) – and found that with the above caveats squarely in mind the levels of reported shared care varied from between 7–15 percent. Here, the authors of the report did not apply a strict time-scale criterion. Rather, it was left ‘open to informants to interpret in the context of their own systems’ (ibid.: 52–3). As well as seeking to establish more precise figures around shared residence, this section notes some of the more generalised research into post-separation contact in Britain and France as well as *extra*-Europe.

### **Patterns within Britain**

As indicated in the previous section, there are few means, at present, by which to gauge the prevalence of shared residence in Britain. While many such arrangements will not be officially recorded, in particular given the strong emphasis on ‘private ordering’, this is due, in the main, to the discrete divisions pertaining to post-separation parenting and the lack of information surrounding non-resident parents more generally. Statistical data taken from recent population, demographic, family and household indexes reveal a dearth of information surrounding the actual circumstances of non-resident parents, in contrast to the wealth of data now available on lone-parent families (e.g. Ford and Millar, 1998; Millar and Rowlingson, 2001). Additionally, ‘absent’ parents by definition are seen as having ‘no dependants’ and are therefore unlikely to be reliant on social welfare provision as a group, in contrast to lone mothers who can be identified, for example, through Child Benefit figures. Indeed, Smart (2001: 125) claims that:

[I]t is impossible to measure whether co-parenting after divorce is increasing . . . because no exact definition . . . can be safely imposed upon the range of flexible arrangements that parents and children adopt over time.

As Affichard *et al.* (1998: 32) point out: ‘The notion of a parent forever is virtually impossible to measure in statistical terms’.

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<sup>8</sup> National informants were recruited for this study from Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Netherlands, New Zealand, Norway, Sweden, UK and USA.

Nevertheless, there is some more generalised research into post-separation contact, which goes some way towards measuring the trend. But there are enormous disparities in findings. As Hunt and Roberts (2004: 3) remind us, 'it depends on which study is relied on, what is being measured, and who is being asked'. For example, resident mothers typically report fathers as having less contact than do non-resident fathers (cf. Bradshaw and Millar, 1991 and Bradshaw *et al.*, 1999). Bradshaw *et al.* (1999: 81–5), point out that lone mothers and non-resident fathers may perceive, and therefore report, contact differently. Smart *et al.* (2001: 126) draw our attention to a similar point, where they 'found that one parent might think he or she was sharing child care on a 50-50 basis while the other parent did not think so at all'.

Blackwell and Dawe (2003), using data from the National Statistics Omnibus Survey (of which the achieved sample comprised 649 resident parents, 312 non-resident parents and 26 who were both), and Walker *et al.* (2004), using both quantitative and qualitative data obtained from previously cohabiting parents who had attended pilot group meetings, report in their respective 'community samples' that 93 percent and 91 percent of mothers, respectively, reported themselves as being the resident parent, with just 5 percent claiming that residence was shared. Fathers, on the other hand, claimed to be the resident parent or to have shared residence in 18 percent and 14 percent of cases respectively. Whatever we are to make of the disparity in reporting between mothers and fathers in both studies, each nevertheless report high levels of weekly contact with fathers; between a third and half of children and 62 percent respectively. Daily contact took place for fewer than one in ten children and monthly arrangements were reported for around a fifth of children in both studies.

Bradshaw *et al.* (1999), using material collected using a sample survey of 600 non-resident fathers in Britain, found that while 47 percent claimed to see their children regularly each week, only around 5 percent of the total had an arrangement that could be described as 'shared care'. However, since the screening questions sought only to identify men whose children normally lived with their mothers in another household, the authors concede that some of these arrangements may have been missed and their study may therefore not be a reliable indication of the prevalence of such arrangements.

Finally, it is of note that results from recent research carried out by *One Parent Families/Gingerbread* and the University of Oxford for the Nuffield Foundation into problematic contact after separation and divorce (Peacey and Hunt, 2008), found in their filtering process that around 12 percent of initial respondents indicated they had a pattern of contact that could be described as shared care. The specific question: ‘Does the child split their time more or less evenly between you and the other parent?’ was included as part of a series of questions in the ONS Omnibus survey (conducted in six waves) between July 2006 and March 2007. Of the total number of separated parents (n=559) involved in this quantitative nationwide survey, around 12 percent of respondents replied: ‘Yes, there is an even split’. Indeed, the question had been qualified by a very strict working definition:

Caring for the child for one or two days and nights per week does not count as an even split. Please only answer yes if you look after the child for three or more days and nights per week, or for around half the year each overall.  
(ibid.: 19)

It is of note that the survey included parents who had separated following cohabitation as well as those who had divorced and that 78 percent (unweighted) of the parents who said that there was an even split were female. Despite this, the authors of the report believe that this figure of 12 percent may be flawed as an estimate of the prevalence of ‘shared care’ arrangements in the population, given the low response rate of non-resident parents. They suggest that had response rates been equivalent between resident and non-resident parents, this 12 percent figure would have been reduced to 9 percent (unweighted). However, the authors go on to suggest that:

An alternative way of thinking about shared care arrangements may be to consider shared-care parents as a type of resident parent, given that they are conceptually more similar to resident than to non-resident parents. If shared-care parents are grouped with resident parents, they form 17 per cent of all resident parents’. (ibid.: 19)

Grouping shared care parents with resident parents is indeed an interesting means by which to gauge the *de facto* prevalence of such arrangements, particularly in light of

recent work carried out by the French demographer Toulemon (2008), of which I shall go on to discuss in the section that follows. It becomes clear that such figures will need to be tested in further research. Whether the numbers of respondents reporting shared residence would increase substantially given a less stringent sampling criterion is also an aspect that will need to be taken into consideration. It is notable, for example, that Skinner *et al.* (2007), referring to Child Support Agency (CSA) clients with ‘some degree’ of shared care rather than roughly equal shared care, report remarkably high proportions for the UK, ranging from between 20–25 percent.

### **Patterns within France**

Surveys carried out in France by the *Institut national d'études démographiques* (INED) between 1986 and 1994 in relation to family demographics, estimated that around 10 percent of separated parents practise some form of shared residence. Indeed, until recently, given the lack of adequate court statistics and incomplete population census, the figures most frequently cited and widely accepted by professionals and family experts within France (of between 10 to 15 percent) relate to these studies. However, Neyrand (2001a), has suggested that this number is likely to have increased somewhat and the introduction of *la loi du 4 mars 2002 réformant l'autorité parentale* (reform of parental authority), looks set to radically increase the prevalence of these types of arrangements still further.

The new law expressly provides for the possibility of choice in the mode of post-separation family life for children. Indeed, a request for shared residence now represents one in ten of all contact and residence procedures concerning children. A recent survey conducted by the French Ministry of Justice on a representative sample of judicial decisions by *les juges aux affaires familiales* (JAF) (judges hearing family matters) for the period 13–24 October 2003 has provided the first data of its kind on recourse to this formula since *la loi du 4 mars 2002* was introduced.

The data from the study, entitled *La résidence en alternance des enfants de parents séparés*, reveal that shared residence was pronounced in approximately 9 percent of all cases (Moreau *et al.*, 2004). This contrasts sharply with previous Ministry of Justice figures (Belmokhtar, 1999), that looked at judicial decisions around divorce in 1996 (post the legal reforms of 1993, see Ch. 3), which revealed that residence was fixed with

the mother in 87 percent of cases, with the father in 11 percent and that shared residence was granted in just 1.5 percent of cases. These figures more closely resemble those found by Poussin and Martin-Lebrun (1997) who, in their French study of children's self-esteem after parental separation, carried out during the school year 1995–6 in which 3098 children aged from 11 to 13 were included, found that a child with separated parents (n=460) lived with the mother in around 85 percent of cases, with the father in 9 percent and that alternate custody occurred in just 4 percent of cases. The authors tell us that when the children lived mainly with the mother, the children had irregular contact in around 28 percent of cases and visited the father every two weeks in 49 percent of cases. This would appear to confirm, at the time of the study, that the 'standard model' of contact (Smyth, 2005) was still very much the norm in France.

Returning to the more recent Ministry of Justice figures (Moreau *et al.* 2004), we also find that, where shared residence was applied for in the courts, in the vast majority of cases (around 81%) it was applied for jointly by both parents. Where parents were not in agreement, shared residence was still granted in a quarter of cases. In the remaining three-quarters of cases, residence was fixed with one parent, the majority of which (around 86%) were with the mother. Where parents were not in agreement (one application in five) the judges had recourse to *mesures d'instruction* (a pre-court inquiry) in half these cases, most frequently in the form of *une enquête sociale* (a welfare report). Shared residence is more frequently accepted when *une enquête sociale* is ordered (61%) than when it is not (39%), indicating that judges do not grant this arrangement unless they have been provided with the maximum amount of information on the parents' situation.

Finally, siblings were rarely separated and the age of the child did not appear to be an obstacle regarding joint applications. Indeed, three quarters of children were under the age of ten, with an average age of seven. Weekly alternate residence was granted approximately eight times out of ten and, as indicated in Table 2.1(p.38), the age of the child appears to have no bearing on the mode of shared residence (i.e. the younger the child, the shorter the duration of residence), with weekly alternate residence being applied for in over 75 percent of all cases, regardless of the age cohort of the child (Moreau *et al.*, 2004).

Certainly the large proportion of negotiations carried out between individuals without recourse to law make private arrangements extremely difficult to quantify. While many cohabiting couples will have arrangements settled by a judge there exists no obligation to do so. In addition, it is probable that many couples who have organised themselves and their arrangements around an initial court order/judicial decision, may reorganise their arrangements (perhaps several times) without recourse to further legal intervention. Indeed, within the British context, the notion of ‘private ordering’ is a major pillar and aspiration of the principle of non-intervention contained within the *Children Act 1989*.

Finally, it is important to consider the work of Toulemon (2008), who has looked at the significance of two-home family situations or ‘multi-residence’ of children and adults for describing family patterns. He suggests that ‘routine’ surveys have failed to address questions of alternative dwellings, which may have led to both separated parents tending to register their two-home children as members of their household. This, he suggests, is likely to have led to an over-estimation of the proportion of children with separated parents, as many ‘one-parent families’ or stepfamilies are only ‘part-time’, if the children from a previous union spend some time with the other parent. Based on figures from the *ERCV* survey – the French part of the EU Survey on Income and Living Conditions (EU-SILC) 2004 – Toulemon (2008: 18–19) tells us that 270,000 children share their time between their two separated parents; a total of 12.2 percent of children whose parents live apart and that, of the roughly equivalent number of children living in father-headed lone parent families – a total of 11.9 percent – ‘half of [these children] are in fact also living with their mother in another dwelling’.

These figures are highly significant since they suggest that the number of children with *de facto* shared residence in France is actually much higher than previously thought, standing at around 18 percent given that the proportion of lone fathers and lone mothers has been overestimated by around six percent respectively.

Within Europe more generally, it would appear that data is hard to come by. Though where it is available, the practice of shared residence appears to have become quite advanced. In Norway, for example, there has been a marked increase in parents choosing shared residence. Figures have risen from 4 percent in 1996 to 10 percent in



2004 (Jensen and Clausen, 1997). The definition of shared residence used by Jensen and Clausen, Kitterød (2005) tells us, is equal amounts of time. A broader definition, such as that used in the present study, would therefore be likely to reveal a much higher figure. Skinner *et al.* (2007: 55), report that around 8 percent of children in Norway now have official addresses in both their parents' home. The authors cite Jensen (2005), who more recently has estimated that as many as 20 percent of children with separated parents spend roughly equal time with both parents.

### **Outside Europe**

Finally, it is important to note the prevalence of shared residence *extra*-Europe, since this may provide an indication of how aspects of this model of family life may develop *within* Europe. The USA, for example, reveals a history of shared residence arrangements dating back to the mid-1970s. Kelly and Ward (2002) point out, that while a presumption of joint 'legal' custody is now commonplace in many states within the USA, fewer have a preference for joint 'physical' custody. However, Clarke (1995) reports that the US Government's *Advance Report of Final Divorce Statistics 1989 and 1990*, reviewed physical custody of children following divorce and found that joint 'physical' custody was not only becoming more commonplace but exceeded 30 percent in four of the 19 US states surveyed.

Maccoby *et al.* (1990) found, in their study of 'Coparenting in the second year after divorce', that Californian parents – in their sample of nearly 1000 families (n=969) with children under 16-years-of-age at the time of their filing for divorce in 1984/5 – had adopted 'dual residence' in the ratio of one in every six couples (between 16–17%), where dual residence represented a minimum of four overnight stays with each parent over a two-week period. Donnelly and Finkelhor (1992), found in their nation-wide study that around 12 percent of parents (n=160) had some type of 'equal physical custody' arrangement, in response to the question '[Do] both mother and father have custody of the child about equally?'. While the French commentator, Tabet (2004), has suggested that certain States in the US have opted for shared 'physical' custody, in the proportion of 40 percent of couples concerned.

In the Australian context, Smyth *et al.* (2003) point to figures suggesting that alternate residence arrangements are relatively rare. Defined by the Australian Bureau of

Statistics (ABS, 1998) as involving at least 30 percent of time spent with each parent, figures were put at less than 3 percent in 1997. These figures were put at less than 4 percent in relation to parents registered with the Child Support Agency; whose definition (2003) revolves around a 40–60 spectrum in percentage terms of time spent with each parent. However, Smyth (2005: 3), again referring to the Australian Bureau of Statistics (2004), has more recently put the figures of children who spend equal or near-equal time with both parents at around 6 percent, a doubling of numbers in six years while Skinner *et al.* (2007) report that around 9 percent of the Australian CSA caseload now has ‘some element of shared care’.

In sum, while there appears to be indications of an increase in shared residence and a broad trend towards more frequent contact that can be discerned across many Western societies, difficulties nevertheless remain in establishing precise indicators given: (i) the disparity in sampling methodologies; (ii) the lack of detailed information on contact patterns; (iii) differences in the choice of respondents and reporting; (iv) differences in working definitions of shared residence; and (v) that studies invariably take place at different time-periods post separation. What is clear, is that the *de facto* practice of shared residence can no longer be seen as marginal and is likely to constitute a minimum of one in ten of all children in separated families within both the UK and France, even when adhering to a narrow working definition. While the proportion of children losing contact with one parent appears to have decreased somewhat, figures nevertheless remain high, averaging (on the balance of studies) between one in four and one in five in both France (Poussin and Martin-Lebrun, 2002) and the UK (Blackwell and Dawe, 2003; Simpson *et al.*, 1995). For some others, ‘insufficient contact [exists] to develop the type of involved parenting likely to yield demonstrable benefits’ (Hunt and Roberts, 2004: 3–4).

### **Family ideologies and shared residence: key features of conflicting discourse**

The final section within this chapter looks at the role of family ideologies and outlines key features of conflicting discourse surrounding shared residence and shared parenting

more generally. Family ideologies provide mechanisms through which representations of what family life should be like are promoted as normal or 'natural'. They can direct, through what Engels (1884) terms 'false consciousness', our expectations, interpretations and experiences of family life. In this way, they arguably provide a means for certain social groups to protect and reproduce existing vested interests, be these economic or otherwise, together with the conditions under which their transmission through generations is ensured.

For 'Marxist feminists', these definitions help to explain women's subordinate position in capitalist societies and their relationship to the labour market. As well as being reproducers of the labour force through the care and socialisation of children, they also constitute 'a reserve army of labour' (Barrett, 1980). For 'radical feminists', the transmission of patriarchal power, in particular through the nuclear family 'serves to oppress women through securing unpaid personal and domestic services' while simultaneously socialising children into 'gender-designated roles' (Rowlingson and McKay, 2002: 57).

Edleman (1977), however, points out that '[p]olitical and ideological debate consists very largely of efforts to win acceptance of a particular categorization of an issue in the face of competing efforts on behalf of a different one'. In this sense there will always be resistance to 'controlling definitions' (Gusfield, 1989). This is a central feature of the work of social theorists such as Foucault, Giddens and Hill. They point out, in different ways, that cause and effect work in two directions, and in this way policymakers also generate policy in response to prevalent ideas.

When we look at how far the ideological constructions of motherhood, fatherhood and childhood have altered in the last fifty years, this 'resistance' to dominant definitions becomes apparent. Motherhood, inextricably linked to marriage for the first half of the twentieth century, was considered to be an essential element of womanhood. It went without saying that once a child was born, the mother would give up gainful employment to devote herself to childcare. That more women are now opting to have children later in life, or not at all, is challenging conventional assumptions, including the link between motherhood and womanhood (Rowlingson and McKay, 2002).

Fatherhood too, is impelled by changing ideas surrounding masculinity (Burgess, 1997; Burgess and Ruxton, 1996; Burghes *et al.*, 1997; Le Camus, 2000; Lewis and O'Brien, 1987; This, 1980). Lewis (1996) points out that: 'It is now established that men can be competent caretakers of children . . . As soon as men take on similar levels (to mother) of responsibility for young children, parenting approaches generally become indistinguishable' (in this regard, see also Booth and Edwards, 1980; Levine, 1976; Lamb, 1997, 2002; Manion, 1977; Parke, 1981, 1996). Indeed, in the French context, Naud *et al.* (1979) were writing in the late 1970s of how '*les jeunes pères sont révolutionnaires*' (young fathers are revolutionary), claiming that fathers were participating fully in the decision to have a baby, in the pregnancy of their partner, in the actual birth process and in the subsequent care of their child. The corroboration of their findings in their study by the mothers of the infants led the authors to conclude that:

*Les nouveaux pères existent . . . une nouvelle image du couple se dessine . . .  
Nous assistons à une révolution dans la famille.* (Naud *et al.*, 1979: 37)

New fathers exist . . . a new image of fatherhood is emerging . . . We are witnessing a revolution in the family.

The shift from their hitherto accepted role as provider and disciplinarian within the home, rather than as involved participator in the birth and subsequent care of children, is bringing about shifts in the equilibrium between the public and private spheres.

Changing ideologies surrounding childhood have also come to play a highly significant part in the way family law and family policy are currently being constructed. Until quite recently, children have been framed within a discourse of welfare and 'concern' that has tended to view them as adults-in-the-making rather than children in their own right (Brannen and O'Brien, 1996). It is significant then that children within both social discourse and a legal framework are coming to be seen as autonomous social actors in their own right (Smart, 1997; Smart *et al.*, 2001), with accompanying 'rights'.

Since the concept of 'ideology' itself is a contested one, and is therefore always speculative, processes of value judgements lead to claims and counter-claims. The changes that have taken place within the family law context – the reinforcement of

parental responsibility – and the joint custody model more generally, have been viewed negatively by some commentators writing within the disciplines of sociology and psychology and several socio-legal academics in particular.

Arguments include suggestions that a father's wish to maintain a caring, integral role in the life of his children should be viewed solely as 'new man' rhetoric (Day Sclater and Yates, 1999: 289): the sole aim of continued contact is to conduct a power site, where 'the operation of the welfare discourse in law provides them with an opportunity, not to come to terms with their emotional needs, but to formulate new sets of "rights" and to pursue retributive agendas against the women they feel have abandoned them'. Smart (2006: ix), in a similar vein, tells us that fathers' claims for closer emotional involvement, greater commitment, shared care and shared responsibility are not intrinsically a problem for feminist analysis, or mothers in general, rather her central critique lies in that fathers are 'agitating to do so primarily after they have separated from their partners rather than during the course of their relationship'. Thus, she concludes, 'the shape of fathers' demands in the early 21st century is not about reconfiguring parenthood as a whole in order that both parents can share the responsibilities and disadvantages—as well as benefits; rather it is a campaign against mothers and a reassertion of paternal privilege which can be exercised at will'. Indeed, Smart (1997) has argued elsewhere that developments in legislation and case-law seeking to facilitate effective cooperative co-parenting relationships amount to 'social engineering' and an attempt on the part of the state to reinstate the 'traditional' patriarchal family; ideas that resonate with those of some French commentators writing in the 1980s in response to *la loi Malhuret* (e.g. Kelen, 1987).

Other discourses, for example those promulgated by 'The Third Way' (Giddens, 1998), recognise the irreversible nature of the changes that have taken place and do not advocate a return to the past. Giddens finds the concept of 'co-operative co-parenting' a highly desirable, perhaps even inevitable way forward in his discourse on the Democratic Family. He goes further to suggest not only that fathers be granted greater parenting rights than at present, but 'they should be provided, where necessary, with the means to discharge their responsibilities' (1998: 97), including the facilitation of such welfare mechanisms as child minding and out-of-school care.

It is apparent from the foregoing discussion, that the debates surrounding shared residence have become highly charged, controversial and often contradictory. Shared residence has generated intense public debate over its respective advantages and disadvantages. Both proponents and critics have been keen to ally their arguments with the wishes and wellbeing of the children, backing up their assertions with findings from research (Rhoades and Boyd, 2004).

Advocates of shared residence often present it as a panacea for all that is wrong with the family justice system and many of the social problems faced by families and society today. This camp has tended to rely on studies that demonstrate the positive effects for children of ongoing relationships with both parents: that the children themselves value these relationships, many wishing for more equal contact arrangements or would have liked to have spent substantially equal amounts of time with each parent (e.g. Cashmore and Single, 2003; Fabricus and Hall, 2000; Gollop *et al.*, 2000). Weyland (1995: 452), in a similar vein, explains how:

children's lives are enriched by having a meaningful relationship with both parents, that joint parenting arrangements will prevent children's feelings of loss and rejection and . . . [will abrogate] the need to take sides or choose between his/her parents, if its adoption results in the avoidance of a dispute about residence.

However, for others, shared residence signals disaster and a retrograde step, in particular for mothers and children. Critics have focused on studies suggesting the lack of a universally workable arrangement for all children and that for some children, living across two households can prove difficult to manage, particularly as they grow older (Neale *et al.*, 2003; Smart, 2004). Arguments have been levied over the effect on the child's stability, constantly moving between homes with no continuity or permanence to their lives (Dolto, 1988). Indeed, Dolto's arguments were instrumental in the French rejection of shared residence becoming a judicial option in the French 1987 legislation. For Dolto, *la garde alternée* offers *ni continuum affectif, ni continuum spacial, ni continuum social* (neither emotional, spatial nor social continuity). These arguments have been countered with suggestions that, provided children know in advance the changes they will be making, they are no more abandoning stability than children within

intact couple families who also move and change, for example, from school to childminder (Baker and Townsend, 1999: 831), from parents to grandparents or from home to boarding school.

Indeed, Neale *et al.* (1998), keen to stress childrens' self-defined interests and needs, reveal the positive effects for the children themselves of a share care arrangement:

Children in shared residence arrangements saw positive advantages in having two homes, introducing a valued element of balance into their lives. (Ibid.: 35)

[T]his arrangement [co-parented family] was viewed positively by the co-parented children; it is a viable form of family life for them. (Ibid.: 43)

Most children in the sample who experienced difficulties in the emotional shift between two homes tended to see this made worthwhile by their retention of what they saw as a 'proper' parent-child relationship; many saw in the arrangements their parents had made for them evidence of their commitment and gave the children a profound sense of being loved and valued. (Ibid.: 27)

Smyth *et al.* (2003), conducting qualitative interviews with focus groups structured around five different patterns of father-child contact, have suggested that shared residence is the most logistically complex of all parenting arrangements and requires a number of material conditions, including: geographical proximity, financial capacity and workplace flexibility to make it work. Indeed, they found in their 56-strong sample of separated parents that, of those within the 'near-equal or shared care' focus groups – made up of seven fathers and five mothers respectively – many had adopted such arrangements 'without any involvement with the legal system. All were employed (either full- or part-time), and appeared to have access to family-friendly work practices (such as flexible work hours)' (Smyth, 2005: 7).

Cadolle (2004: 125), has suggested that shared residence is unlikely to be practised by working-class parents when taking into account the fact that the father and the mother

must each provide suitable accommodation for their children. Moreover, all fathers do not have the means to help the mother with her accommodation of the children as well as themselves. The idea that shared residence primarily constitutes a middle-class option is one already embedded within the American divorce literature (e.g. Pearson and Thoennes, 1990). Maccoby *et al.* (1990), also point to the higher earning capacity of these families who, generally speaking, also possess higher levels of education. Finally, Skinner *et al.* (2007) also found, in their international study of child support policy in 14 countries, that where data existed, it appeared that those whose children alternated their residence tended to be better off and previously married parents.

Concerns surrounding shared residence have also centred on the relationship between parents post separation and divorce. In particular, that on-going contact may provoke or sustain conflict between parents (Baker and Townsend, 1996: 225; 1999: 831; Cohen and Gershbain, 2001: 172–3; Kurki-Suonio, 2000: 197–8). In this sense, shared residence would arguably require a high degree of mutual support between parents for it to work in any reasonable fashion, despite this mutual support not being a typical feature of families in conflict (Baker and Townsend, 1999: 831; Rhoades and Boyd, 2004: 133; Smyth *et al.*, 2003; see also Trinder *et al.*, 2005 *re* conflicted contact). These ideas resonate with those of Chiland (1978), who suggests that more than any other model of post-separation family life, shared residence would, on the surface, appear to require a significant level of agreement and understanding between parents.

However, not all commentators have accepted this line of argument. Indeed, Baker and Townsend (1999: 831) observe that it is the current ‘winner takes all model’ that promotes hostilities, by setting parents in opposition to each other. They go on to suggest that ‘shared residence could lead to an overall reduction in conflict’. This argument is echoed by Weyland (1995: 452), who points out that joint parenting, ‘may possibly reduce the antagonism between parents which is so common after marital breakdown’. And Tabet (2004), pointing to American practices as often being in advance of European mores (see also Ferguson, 1988), sees this evolution as revealing a willingness to limit the damage of separation for children.

Weyland (1995: 451–2), argues that ‘if parents knew that the courts were likely to make such orders they would become more willing to consider joint residence as an option



and less likely to embark on a dispute about residence'. As a result, parents may be much more willing to be actively involved in the child's life and to make a positive contribution to their upbringing (Arditti, 1992); be less likely to allow the ties with the child to weaken (Kline *et al.*, 1989); and be more able to co-operate with the other parent (Pearson and Thoennes, 1990).

Finally, Poussin and Martin-Lebrun (1997: 147) remind us that the family is the *premier échelon du collectif* (the first level or stage of the collective); as such, the issue of shared residence is politically charged, since it fundamentally encompasses notions of what it means to be a family. Giddens (1998: 89), too, speaks of the family as 'a basic institution of civil society,' its backdrop, one of profound social change. If, as Coote *et al.* (1998) argue, as part of a debate on gender equality within intact couple households, family policies and provision should seek to accommodate 'a situation . . . where both parents are enabled to be fifty percent carers, and fifty percent breadwinners, each responsible in a complete way for the children's care, and each contributing from his/her ability to pay', it could be argued that this may also necessitate a revision of the way post separation care arrangements are considered. Indeed, that it may require a legitimization of shared residence as a *bona fide* category in its own right with concomitant policy needs, that stretch beyond a civil recognition of co-parenting within each family justice system. Just how far, however, can family law and family social policy be said to have embraced such a model within each country? The following two chapters explore the legal and policy contexts within Britain and France, examining the part they play in both facilitating and militating against this model of post-separation family life.

## **Chapter 3**

### **The legal context in Britain and France**

#### **Introduction**

As we move into the twenty-first century, issues surrounding biological, social and legal notions of kinship have become increasingly complex. Ideas of what constitutes ‘family’ no longer remain neatly rooted as a social entity in ties of blood or marriage. This complexity makes prospective legal and social regulation of family life extremely problematic. As Jackson (1997: 54) indicates: ‘The pluralism which is dictated by the reality of modern family life sits uneasily with the law’s commitment to clear and unambiguous rules’. As French and British governments have sought ways of responding to the consequences of family breakdown and the development of alternative living arrangements, notable differences are starting to emerge in their respective approaches; in particular, the extent to which a dual-carer model of post-separation family life is recognised and supported.

This chapter outlines the legal framework within which shared residence currently operates in Britain and France. By relating the practice of shared residence to the changes that have taken place in the respective private family law of each nation, it sets out some of the more empirical aspects of such arrangements while highlighting the tensions inherent between private ordering and the desire for regulation.

#### **The legal context in Britain**

##### **Background**

In order to contextualise the approach of family law in Britain relative to the care of children of separated parents, it is worth recounting a few demographic statistics of families in the UK. In order to assist the reader, I have set out in Table 3.1 the divorce rates, numbers of births outside marriage and percentage of children in lone parent families for both the UK and France for the year 2001.

**Table 3.1 Some key demographic figures at the turn of the century**

<b>2000/2001</b>	<b>UK</b>	<b>France</b>
Divorce rate (divorces per 100 marriages)	53	41
Births outside marriage (% of all births)	41	44
Percentage of children in lone parent families	21	17

*Source:* Eurostat, 2004a, 2004b.

Over the past 30 years, divorce rates have doubled and those of cohabitation have trebled. Between 150,000 and 200,000 parental couples separate each year with around 40 percent of children experiencing parental divorce by their sixteenth birthday. In 2001, there were 53 divorces for every 100 marriages in the UK in contrast to 41 in France. In the same year, there were roughly equal rates of births outside marriage, standing at around 41 percent of all births in the UK and 44 percent in France. Finally, around 21 percent of children were living in lone parent families in the UK compared to 17 percent in France (Eurostat, 2004a, 2004b).

In the main, this section will focus on the private family law context within England and Wales – the only unified jurisdiction within the UK; the other related jurisdictions are Scotland, Northern Ireland, the Isle of Man, Jersey and Guernsey. Nevertheless, reference is made to the wider UK family law context where any significant differences in approach exist and several points of interest are raised relative to Scottish law in particular.<sup>9</sup> For example, in contrast to family law in England and Wales, a requirement exists in Scotland for the resident parent to allow contact and the other parent to maintain it.

### **Sources of law**

With regard to sources of law, the unified jurisdiction of England and Wales does not possess a codified system as in France. Instead, family law is found in Acts of Parliament (legislation and statute law), and derives from the interpretation and application of the law – precedents – contained in these Acts. The decisions of a higher

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<sup>9</sup> Family law is a devolved matter under the *Scotland Act* 1998 and dealt with by the Scottish Parliament. Family law matters have also been transferred by the UK Parliament to the Northern Ireland Assembly under the terms of the *Northern Ireland Act* 1998.

court will generally be binding on a lower court. While Acts of Parliament are the primary source of modern family law, several aspects are still governed by common law as developed by judges over the years. Rules relating to practice and procedure are found in secondary legislation and in Practice Directions issued by the Family Division of the High Court. Finally, the UK has ratified a number of Conventions dealing with international aspects of family law, the most significant being the European Convention on Human Rights incorporated into UK law through the *Human Rights Act* 1998.

There is no single family court; family cases are initiated in the family proceedings court (where judges are lay persons advised by a legally qualified clerk) or the county court (local civil courts with legally qualified judges) or the Family Division of the High Court. Appeals are generally made to the Family Division of the High Court or direct to the Court of Appeal and may end up in the House of Lords. Appeals are based either on an error of law or an unacceptable exercise of the judge's discretion. The higher courts rarely interfere in cases involving the exercise of the judge's discretion and appeals are rarely successful.

A client will usually consult a solicitor who will give advice, negotiate and act as an advocate in lower, first instance courts. Cases involving more complex issues may require a barrister. Although still unusual, some parties (almost always the non-resident parent) will represent themselves in court, occasionally with the aid of a *McKenzie Friend*; a term used to describe someone who assists a litigant in person in court.<sup>10</sup>

One of the major shifts in family law in the 1970s was to see marriage and divorce evolve as a private matter and increasingly become less subject to any 'higher' moral ordering from Church or State. Nevertheless, the shift from seeing the responsibilities of divorcing couples less as spouses and more as mothers and fathers, meant that the State became more heavily involved in the regulation of parents (e.g. Cretney, 2003) and court orders became used in almost all divorce cases involving children. A major

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<sup>10</sup> Where no exceptional circumstances exist, litigants in person are entitled to have lay assistance. A *McKenzie Friend* may provide moral support, sensible (non-legal) advice, speak quietly to the litigant in person and take notes during the hearing. However, they are unable to act as a legal representative or exercise rights of audience – unless invited to speak by the judge. They need not be legally qualified. Their role was set out most clearly in the eponymous case *McKenzie v McKenzie* [1971] P33; [1970] 3 WLR 472; [1970] 3 All ER 1034, CA.

consequence of the *Children Act* 1989 was to shift the focus of attention away from what was required in law of parents and onto the quality of parent–child relationships. Underpinned by the principle of private ordering, this approach recognised that a court order may be neither necessary nor helpful where parents are able to agree arrangements for the upbringing of their children.

### **Private ordering**

The current emphasis in Britain is on private ordering and non-intervention. Parenting disputes are encouraged to be resolved in ‘the shadow of the law’ and courts only become involved as a last resort. In order to reflect this emphasis, the term ‘collaborative parenting’ is becoming more widely used (DfES, DCA and DTI, 2004: at para. 79). In England and Wales, the *Children Act* 1989 introduced the ‘no order principle’ as part of its statutory welfare checklist in the making of private law court orders under section 8 of the Act. Section 1(5) provides that:

Where a court is considering whether or not to make one or more orders under this Act with respect to a child, it shall not make the order or any of the orders unless it considers that doing so would be better for the child than making no order at all.

As well as explicitly recognising that parents themselves are usually the best people to make decisions concerning contact arrangements for their children, this principle is also seen to act as a restraining feature on the use and misuse of orders. Currently, only 10 percent of separating couples with children have their contact arrangements ordered by the courts. However, the number of disputes ending up in court are rising, and in 2003 the courts in England and Wales made 67,000 contact orders, initiated in the main by the non-resident parent. There has been general agreement between both the Government and members of the senior judiciary that the way in which courts intervene in disputed contact cases does not work well (DfES, DTI and DCA, 2004).

### *Non-legislative measures*

As a result of this general consensus, and in line with the principle of non-intervention, several non-legislative measures have recently been introduced designed to encourage

separating parents to reach agreements without the need to go to court (DfES, DCA and DTI, 2005). These include:

- (1) the targeting of legal aid towards promoting earlier, more consensual, resolution of private family law disputes and less litigation;
- (2) the revision of parenting plans, intended to be used as a practical aid to help parents reach reasonable agreements by outlining the sort of contact arrangements that might work well for children at different ages and who are living in a range of circumstances. Having been available since 2002, these plans have been updated and are being made widely available in solicitor's offices, advice and mediation centres. It is of note that the plans include an example of shared residence in the updated version, where the parents concerned have adopted an 'alternate weeks' approach (DfES, 2006a: 32);
- (3) the promotion of mediation and in-court conciliation among the judiciary, so that parties who begin court proceedings are strongly encouraged to attend mediation. In addition, dispute resolution schemes in courts – 'in-court conciliation' – are being promoted and extended across England and Wales with the aim of reaching agreements between the parties without recourse to a full court hearing.

It is worth exploring some alternative dispute resolution processes in more depth here since they make up the backbone of drives towards non-intervention. Family mediation, for example, has played a central role in such approaches in the UK since the mid-1980s.

### *Mediation*

Family mediation – which developed under the name of 'conciliation' in the early 1970s and within a few years comprised both 'in court' and 'out of court' family conciliation services – involves couples in a series of meetings with a single mediator; perhaps individual meetings at first and then together, with a view to resolving disputes and reaching agreement as an alternative to court-based resolution. Privately funded mediation cases can currently opt for such services, while publicly funded parents must show they have at least explored the option as an alternative before turning to litigation in order to access continued funding. Parties are generally encouraged to seek independent legal advice on any agreement reached and these can then be underpinned

by a 'consent order' from the courts. Despite the disappointing results of pilot mediation programmes (Davis *et al.*, 2000; Walker, 2001), which led to Part II of the Family Law Act 1996 not being implemented, the Government nevertheless has worked to encourage such practices:

[T]he strongest possible encouragement is given to parties to agree to mediation or other forms of dispute resolution, in order to ensure that all alternative means of resolving family disputes, short of contested hearings, are fully utilised. (DfES, DTI and DCA, 2004: at para. 65)

Publicly funded mediation cases rose from 300 to over 13,000 a year in the period 1994–2004 and around five percent of separating couples were assisted to reach agreements (ibid.: at para. 64).

#### *Collaborative law*

A new approach to managing the divorce process in a more 'dignified manner', thereby bypassing an 'adversarial legal system', has also been set in motion – by family lawyers themselves. This process, known as 'collaborative family law', is being widely promoted through 'Resolution' (formerly known as the Solicitors Family Law Association (SFLA))<sup>11</sup> and involves parties agreeing with their lawyers to resolve issues without going to court. The divorcing couples set the agenda themselves and discuss what they want in a series of round-the-table meetings. All information and disclosure is provided in the collaborative process and a settlement is reached (and drafted) in 'four-way' face-to-face meetings (the two parties and the two lawyers); although other experts such as child specialists may also be enlisted as part of the team. The idea is that the clients remain in control of the process but with lawyers present throughout, providing legal advice and guidance and helping with negotiation and problem solving in order to shape a 'fair' agreement. If no settlement can be reached, new lawyers will have to be instructed for court proceedings (Greensmith, 2007).

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<sup>11</sup> Resolution supports the development of family lawyers through its national and regional training programmes, through publications and good practice guides and through its accreditation scheme. Their membership consists of 5,000 lawyers and they claim to be the only body providing training and support for collaborative lawyers in England and Wales.

This new approach remains in its infancy and whether it enables couples to reach more amicable separations than is currently the case is at present difficult to forecast. Proponents of collaborative law claim it can minimise misunderstanding, protect the interests of all concerned and enable parents to keep trust and communication channels open. However, arguments have been levied around collaborative law, as they have been with mediation approaches more generally, that power imbalances may be created that work in favour of the more articulate parent, or that they may allow arrangements to flourish which have been created through intimidation. Meetings are likely to be emotionally confronting, in particular where there have been issues of domestic violence. In the case of the latter, critics claim that it may not best serve the interests of women who may go along with an arrangement because of being too intimidated not to (for a further discussion, see ‘Resolution first for family law’: [www.resolution.org.uk](http://www.resolution.org.uk)).

#### *In-court conciliation*

Finally, in-court conciliation services are being actively promoted in an attempt to make sure conflicted cases do not move too quickly into formal adversarial proceedings (where there are no allegations of harm) without first exploring informal resolution of the issues in dispute.<sup>12</sup> Typically, this involves parents being diverted from the court hearing in order to attend one or more ‘problem-solving’ sessions conducted by a facilitator, most usually a family court advisor from the Children and Family Court Advisory and Support Service (CAFCASS), often with legal representatives also present.

Additional support for in-court conciliation was announced by the Government in 2004 through the Family Resolutions Pilot Project (FRPP). This scheme differed somewhat from existing interventions by incorporating parent education sessions following an initial risk assessment at court. This ‘group work’, led by *Relate*, was in addition to parent planning meetings with CAFCASS officers. The sessions were mixed sex, with each half of the former couple attending different groups from each other. Over two sessions, the aim was to raise awareness of the needs of children following separation and help parents to manage conflict and improve communication and collaboration. These groups were later reported as being ‘supportive and helpful’, with both mothers

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<sup>12</sup> In the UK context, while procedure for the adjudication of disputes is similar to that of England and Wales, in-court conciliation is not available in Northern Ireland.



and fathers feeling ‘equally positive’ about the sessions. Those parents who had completed the pilot were ‘significantly more likely to report that the parental relationship had improved than (a) parents who did not complete the pilot and (b) parents who had just attended in-court conciliation’ (Trinder *et al.*, 2006: 6). However, since the scheme was voluntary, difficulties were encountered in convincing people to take part in the scheme and, as such, it was considered as something of a failure when measured by participation levels. In its report to Parliament, the Constitutional Affairs Committee (Sixth Report, 2006) recommended that the scheme should be run on a compulsory basis. It is of note that parents were less positive about the parent planning process with CAFCASS, which ‘seemed little different from traditional in-court conciliation with limited use of parent plans and very few children involved in the process’ (Trinder *et al.*, 2006: 6). It would appear that, with the exception of the parenting groups, the FRPP produced very similar results to in-court conciliation.

### **Parental responsibility**

The major piece of legislation affecting children is the *Children Act* 1989,<sup>13</sup> covering both private and public law applications relating to children. Crucially, the Act replaced the notion of parental rights with that of parental responsibility, namely: ‘all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property’. There is no list of parental responsibilities; instead they vary according to the different ages, needs and circumstances of the child.

Since December 2003, unmarried fathers who jointly register the birth of their child with the mother have automatic parental responsibility; thus affording them the same rights as married fathers. In addition, a court may now order a paternity test against the wishes of the mother. New legislation has also made the enforcement of contact orders easier. The Children and Adoption Bill, introduced in June 2005 paved the way for legislation enhancing the court’s powers. Based on the inter-departmental Green Paper, *Parental Separation: Children’s Needs and Parents’ Responsibilities* (DfES, DCA and DTI, 2004), the legislation does not substantially alter the terms of the *Children Act* 1989, but clarifies the means of implementation and specific penalties to enable more

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<sup>13</sup> The Children Act 1989, which came into force in England and Wales in 1991, was enacted as the Children (Northern Ireland) Order in 1995 and did not come into force in Northern Ireland until November 1996.

flexibility for the courts. The key principle that children benefit from contact with both parents remains, though a presumption of equal contact was rejected, being deemed impractical.

### **Shared residence orders**

In 1988, the Law Commission, though disclaiming any intention of promoting shared residence, pronounced that they saw no reason for it to be actively discouraged (Law Commission, 1988: para. 4.12). Under the *Children Act* 1989, arrangements as to where a child is to live following parental separation can be made by a court under section 8(1). The relevant provision dealing with shared residence orders is s.11(4):

Where a residence order is made in favour of two or more persons who do not themselves all live together, the order may specify the periods during which the child is to live in the different households concerned.

While this provision clearly lends legitimacy to a dual-carer model of post-separation parenting, the guidance accompanying the Act would appear somewhat ambiguous in its intentions. While expressing the view that such orders would not become the norm, stating explicitly that ‘most children will still need the stability of a single home’, the Department of Health nevertheless also made it clear that ‘shared care’:

has the advantage of being more realistic in those cases where the child is to spend considerable amounts of time with both parents, brings with it certain other benefits ... and removes any impression that one parent is good and responsible whereas the other parent is not. (Department of Health, 1991: para. 2.2[8]).

Despite expressing doubts as to the ‘efficacy in practice’ of such arrangements, the subcommittee of the Advisory board on Family Law also gave its cautious approval to the ethos of shared residence in its report, *Making Contact Work* (Lord Chancellor’s Department, 2002). The UK Government recently reviewed various issues relating to parental separation in England and Wales (*Parental Separation: Children’s Needs and Parents’ Responsibilities*), including the introduction of a legal ‘presumption of equal contact’. While 20 percent of responses to its consultation (DfES, DCA and DTI, 2004)

favoured such a presumption, the Government's report on the consultation made it clear that it did not support such a change (DfES, DCA and DTI, 2005: paras 11, 13, 42–5).

Nevertheless, despite this rejection and a judicial conservatism towards such arrangements, the former head of CAFCASS, Anthony Douglas, indicated in 2005 a new willingness to consider a 'two home strategy' for the children of separated parents:

Children can grow up with multiple attachments and can cope with parallel parenting ... shared residence approaches are usually best. (Douglas, 2005)

However, the current position is that while s.11(4) shared residence orders are an option and that judicial acceptance of such orders is increasing, they remain little used. Ultimately, the making of such orders remains at the discretion of the judiciary. Since no codified system of family law exists, as it does in France, the following section traces the central case law governing shared residence, highlighting its development through the interpretation and application of legislation and statute law.

### **Case law concerning shared residence**

Prior to the *Children Act* 1989 the court had ruled in *Riley v Riley* [1986] 2 FLR 429, that it was not open to a court to make what was then known as a joint 'care and control order'. Emphasis was placed squarely on the need for a child to have one settled home, as was the case in France at this time. In many ways the case encapsulates the historical antipathy towards shared residence. The 1989 Act was to signal a more flexible approach in relation to childrens' living arrangements. Included within it was an acknowledgement that a residence order could be made in favour of more than one person.

*Re H (A Minor) (Shared Residence)* [1994] 1 FLR 717, decided in 1992, was the first reported case post-*Children Act* 1989, and demonstrated little change in approach. Purchas LJ stated that a shared residence order would rarely be made and would depend upon exceptional circumstances. In *A v A (Minors) (Shared Residence Order)* [1994] 1 FLR 669, Butler Sloss LJ disagreed with the importation of a general test of exceptional circumstances into the interpretation of s.11(4). However, she went on to describe the order as unusual and only to be made in unusual circumstances. She described how a

court would wish to see a positive benefit to the child in making such an order, demonstrated in light of the s.1 welfare checklist (*Children Act* 1989). Where concrete issues were left unresolved between parties, it was considered unlikely that such an order would be made, with any decision alighting to the discretion of the judge on the facts of the case. Butler-Sloss LJ speculated that a shared residence order might be appropriate where there had been long-standing successful arrangements involving substantial staying contact and a positive benefit could be shown.

*D v D (Shared Residence Order)* [2001] 1 FLR 495, symbolised a major departure from earlier case law. Butler-Sloss P, reflecting on her earlier decision in *A v A*, held that it was probably not necessary to establish a positive benefit to the child. What was necessary, was to demonstrate that the order was in the interests of the child in accordance with the s.1 welfare checklist of the *Children Act* 1989. She went on to underline the importance of the flexibility of the Act in s.8 orders, observing that, with hindsight, the decision of the Court of Appeal in *Re H* had been unduly restrictive and that it was not necessary to establish exceptional circumstances before the making of a shared residence order.

In *Re A (Children) (Shared Residence)* [2002] 1 FCR 177, Hale LJ overturned a shared residence order that had been made by the judge at first instance who wished to recognise the equal status of the parents, even though one of the children who resided with his father was not seeing his mother and did not wish to do so. Hale LJ declared that an order for shared residence should reflect reality, or the real position on the ground. In the following year Thorpe LJ and Ferris J held, in *Re A (Children) (Shared Residence)* [2003] 3 FCR 656, that the old judicial convention that a choice had to be made between the two parents no longer applied as it used to. Orders should, above all, reflect the realities of a situation. Where a proximity of homes existed and there was a relatively fluid passage of children between homes, the only proviso was whether any welfare considerations prevented it.

In *Re F (Shared Residence Order)* [2003] EWCA Civ 592, [2003] FLR 397, such an arrangement was even approved by the courts where parents lived a considerable distance from each other. Thorpe LJ held that the fact that parents' homes were separated by a considerable distance (the mother intended to move to Scotland) did not

preclude the possibility that the children's year could be divided between the homes of two separated parents under a shared residence order. Wilson J, held that if the home offered by each parent was of equal status and importance to the children, then an order for shared residence could be valuable even where children were not alternating between the two homes evenly. *Re F* was also notable for the interesting practical observations made by Wilson J, who expressed the view in relation to a time schedule that was produced, that such schedules, often relied upon by aggrieved parents, were usually only of limited value. He went on to reject arguments that time spent on a Saturday with one parent was equivalent to weekday mornings spent with the other, claiming they were vastly more significant.

Finally, in *Re G (Residence: Same-Sex Partner)* [2005] EWCA Civ 462, [2005] FLR, the Court of Appeal endorsed Wall LJs approach in *A v A (Shared Residence)* [2004] EWHC 142 (Fam), [2004] 1 FLR 1195, by accepting that the parents' failure to cooperate could no longer be used as a reason to refuse a shared residence order. Rather, where it would otherwise be the correct order, the failure of cooperation is a further reason to make – rather than refuse – a shared residence order.

In sum, the making of shared residence orders is now likely to be considered in a greater range of cases. There is no longer a need to show either 'exceptional circumstances' or a 'positive benefit'. Neither is past antipathy between parents, the distance evident between households nor the strict division of parenting time just cause for a denial in making such orders. What appears paramount is that shared residence must continue to meet the underlying 'best interests of the child' principle. The logistics of such arrangements, any potential conflict between parents or confusion that may be created will however remain relevant factors in the development of such orders. Indeed, sole residence in favour of one parent with a contact order in favour of the other parent looks set to continue within the British context in ways that, as we shall see, contrast sharply with that of our continental neighbours in France.

## The legal context in France

### Background

Underpinning the current legal context in France is the notion of *coparentalité*, which is based upon the indissolubility of ties between parents and children. This development is seen in France as an inevitable consequence of the rising numbers of children affected by their parent's separation each year (see Table 3.1, which compares figures for the UK and France). In 2001, around 40 percent of marriages were ending in divorce compared with just 11 percent in 1970. While these rates had stabilised somewhat by the turn of the century (114,000 divorces in 2000 compared to around 116,000 in 1996), this can be seen largely as a consequence of the drop in marriage rates resulting from an increasing rise in cohabitation. Currently, around 120,000 divorces in France are pronounced each year for every 280,000 marriages, and more than 70,000 judicial decisions are made each year concerning the organisation of the life of children.

The numbers of non-married couples who separate without the involvement of a family judge is hard to measure. Many negotiations take place between non-married parents without recourse to family law. Indeed, while a non-married couple may go before a family judge, there exists no obligation to do so. Thus, the extent of private ordering in this context is difficult to quantify. In addition, many couples who have organised their family life around a judicial decision may subsequently modify their arrangements without returning to a magistrate. Three quarters of non-married couples have children. Of these, around 90 percent have parental authority for them. In other words, these children have been recognised by both parents within their first year of life; an act which results in the unmarried father being given the same legal status as a married one. Similar to cases within the British context, evidence suggests that unmarried couples with children are more likely to separate than are parents who have been married.

The greatest risk of divorce appears to arise within the first four years of marriage, although these figures should be put into context in that many of these marriages will have been preceded by an often-lengthy period of cohabitation. Tabet (2004), suggests that in large cities and more urban areas, around 50 percent of couples end up separating, and that in parts of Paris more than half of all children in *écoles maternelles*

(nursery-school aged children) are from homes where parents have already separated. What this signifies is that parents are separating earlier, a trend that has become more pronounced since the mid-1980s, sometimes occurring very soon after the birth of a child, if not before. As a result, questions surrounding residence increasingly concern not only younger children, but also younger parents of these children. This development may have profound implications for both policymaking and practice in respect of the development of child welfare and post-separation decision-making processes: for example, in the development of father-inclusive ‘early years’- or ‘sure start’-type programmes. Given that the notion of *coparentalité* continues even where parents have separated ‘prematurely’, this type of initiative may be of particular salience should discernible differences in approach between ‘younger’ and ‘older’ separating adults be found to exist more generally. In her influential report on the exercise of parental authority, Irene Théry (1998) states:

*La société considère qu’il existe une contrepartie très forte à la liberté accrue du couple: l’obligation corrélative pour chacun des deux parents de maintenir sa responsabilité à l’égard de l’enfant, et de respecter et encourager celle de l’autre.*

Society considers that a strong counterpart exists to the freedoms accrued by the couple: namely, the obligation of each parent to maintain responsibility with regard to their children and to respect and encourage that of the other parent. [My translation]

This final phrase can be seen to hold particular purchase within the context of current French family law. Indeed, the propensity of a parent not only to *assumer ses devoirs* (assume their responsibilities) but to *respecter les droits de l’autre* (respect the rights of the other parent) – of which the likely facilitation of contact is now a strong consideration – is now part of what can be seen as a welfare checklist. This list is made up of five points or criteria (art. 373-2-11) that must be taken into account by the family judge when making any final decision relative to the residence of the child and the exercise of parental authority more generally. Though not considered as exhaustive, the other four criteria comprise:

- (i) *la pratique des parents* (the practical experience of parents);
- (ii) *les sentiments de l'enfant mineur lorsque celui-ci est capable de discernement* (the wishes and feelings of the child relative to their age and understanding);<sup>14</sup>
- (iii) *le résultat des expertises éventuellement effectuées, tenant compte notamment de l'âge des enfants* (the results of expert evaluations, relating in particular to the age of the child); and
- (iv) *les renseignements éventuellement recueillis 'dans les enquêtes et contre-enquêtes sociales'* (information received within welfare reports and any counter or related inquiry).

### Sources of law

French family law is laid down in the *Code Civil* (Civil Code) and acts as the primary source of family law. Case law also plays an important role. While not bound by previous decisions, those of the *Cour de Cassation* (the French Supreme Court) carry great weight and are usually applied by judges in the lower courts. There is no 'family court' as such. Instead, family law cases (which include divorce, judicial separation and ancillary matters) are heard in *tribunaux de grande instance* (local civil courts of first instance) by *juges des affaires familiales* (JAF) (judges hearing family matters). The family judge will usually sit alone but is able to refer the case to the whole *tribunal*. This referral is mandatory if requested by the parties. Any appeal will be heard in the appropriate *Cour d'Appel* (Court of Appeal), passing to the *Cour de Cassation* in Paris on points of law only. Parties must be represented by an *avocat* (lawyer), who gives advice, pleads and acts on behalf of their client in the *tribunal*. It would appear that, in contrast to the British context, the intervention of a lawyer is compulsory within the French context. At the time of writing, I am unaware of any cases of parents representing themselves in Court in respect of the framework of divorce and '*separations de corps*' (legal separation).

In France, a new approach to post-separation family life in the form of *résidence alternée* (or shared/alternate residence) – provided for in the 2002 reform of parental authority – can be seen as the latest stage in a legal evolution that has moved

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<sup>14</sup> Generally speaking a judge will listen to the wishes of a child over 13 as to which parent he or she wishes to live with, but in practice the child is usually only heard when a party so requests. However, social workers and experts can also be asked to report and give evidence in this regard.



progressively towards equalising the position of separated parents with respect to their children. The following section traces some key developments in the evolution of French family law that has seen the notion of exclusive and indivisible ‘custody’ of the child replaced by one of ‘residence’ and the joint exercise of ‘parental authority’, culminating in shared residence being framed as an explicit legal option for separating parents.

### **The development of ‘residence’ within French family law**

The French Civil Code of 1804 introduced the notion of *puissance paternelle* (parental rights). While *le droit de direction* (the right of supervision) contained within it applied ostensibly to both parents, within marriage it was exercised by the father alone. Divorce became available with the *la loi Naquet* of 1884. The notion of ‘culpability’ inherent within the act of divorce led to a situation in which children would invariably be separated from one parent, as the ‘innocent party’ would begin to rebuild their lives. Where parents were not married, parental rights applied exclusively to the mother or – after *la loi du 2 juillet 1907* – passed to the father where he had recognised the child, either before or at the same time as the child’s mother. Nearly 170 years after it was introduced, *la loi du 4 juin 1970* abolished the notion of *puissance paternelle* and along with it that of ‘the head of the family’. At this time, married couples were given equal parental competence in the ‘moral and legal’ direction of the family.

*La loi du 11 janvier 1975*, saw the introduction of divorce by mutual consent, which acted to replace the notion of divorce as a ‘sanction’ with one of ‘remedy’. The loss for the child of one of their parents (more often the father) and for one of the parents the loss of their child as the inevitable consequence of divorce began to be called into question. This questioning became tied to *l’intérêt de l’enfant* (the interests of the child) principle, which came to hold increasing importance in decisions concerning residence. However, despite this link the law did not seek to modify the exclusive character of custody (art. 287), according to which the interests of the child required that it would continue to be granted exclusively to either one spouse or the other. While this exclusive allocation rested with the mother in the majority of cases, the idea that the mother should inevitably gain custody of the child was also called in to question at this time. With the rise of feminism, young couples wished for more equality and ‘new

fathers' – albeit in the minority – became more engaged in the care of their children, including newborns.

In 1981, The *Pelletier* Report sought to clarify the notion of the (best) 'interests of the child' in situations of divorce, on which little agreement existed. Influenced in no small measure by the deliberations of the celebrated psychoanalyst Françoise Dolto, the authors of the report recommended that while the continuation of contact with the father should be encouraged, the practice of shared residence should be rejected as being contrary to the needs and stability of the child. As such, case law maintained the principle of a primary carer at this time and rejected forms of staying contact that involved overly long periods of time being spent with the other parent, even less so under a form of regular alternating contact. It was even considered by the *Cour de Cassation* in 1982, that a 'right of visit' every other weekend deprived the parent guardian: *de l'exercice entier de l'autorité parentale dont le droit de garde constitue le principal attribut* (of the full exercise of parental authority of which the right of custody constitutes the principal attribute) (Cass. Civ. 1, 11 mai 1982, Bull. Civ.1, n° 166). Two years later, *la deuxième chambre civile* (the second civil chamber) declared unequivocally that:

*Si, en cas de divorce, le juge, tenant compte des accords passés entre les époux, peut confier conjointement la garde des enfants communs à leur père et mère, il ne peut leur en confier alternativement la garde . . .*

(2 mai 1984, Bull. Civ. 2, n° 78)

Though a judge is able to confer joint custody on both the mother and father of children in cases of divorce, while taking into account any agreement made between them, he [*sic*] is nevertheless unable to confer alternate custody. [My translation]

Thus, the judicial reticence towards shared residence can be understood as being a reluctance to allow the sharing of what was seen to be an indivisible right. Despite the exercise of joint custody having now been widely established in law, it was nevertheless accompanied by an obligatory determination of residence.

*La loi du 22 juillet (la loi Malhuret) 1987*, did away with the notion of custody and introduced the exercise in common of parental authority by both parents following divorce. While encouraging parents to reach agreement among themselves in respect of the residence of the child, it nevertheless fell on the *juges des affaires familiales* to fix the *résidence habituel* (primary residence) of the child (art. 287). This excluded the possibility of parents choosing to adopt shared residence since it was still considered as being contrary to the child's need for stability. In relation to *l'enfant naturel reconnu* (children born outside of marriage who had been recognised officially by both parents), the primary residence was fixed with one parent in the same way as where parental authority was exercised in common (art 374). Thus, the legal reforms of 1987 continued to structure the life of the child after divorce by designating an official place of residence. However, as Fagnani (1996: 63) points out: at the time 'most divorced parents [were] not satisfied with this law because they wish[ed] to implement true joint custody, which [was] not recognised by the law'.

In 1989, France ratified the *International Convention on the Rights of the Child*, and the importance of maintaining a link between the child and his/her birth parents – where this was not contrary to the child's best interests – became enshrined in domestic and international law. *La loi du 8 janvier 1993* ruled on the exercise in common of parental authority, whatever the marital status of the couple – whether married, unmarried or divorced. This signified that each parent was entitled to take part in carrying out the day-to-day running of family life concerning the child, and it aimed to equalise the position of children, whatever their filiation. Since this date, parents have been able to agree on their own mode of residence where this is not considered to be contrary to the interests of the child. The law of January 1993 modified article 287; that provided for the family judge to stipulate the primary residence of the child in each case, thereby introducing an optional character to this permanency.

### **The current position in France**

With the introduction of *la loi du 4 mars 2002*, [*la résidence alternée n'est plus désormais une revendication mais une possibilité* (alternate residence is no longer a demand but a possibility) (Lienhard, 2002: 49). Indeed, the expression *résidence en alternance* has now officially entered into the language of the Civil Code and is placed symbolically before other forms of residence: *La résidence de l'enfant peut être fixée en*

*alternance au domicile de chacun des parents ou au domicile de l'un d'eux* (art. 373-2-9, para.1) (The residence of a child may now be shared alternately at the home of each parent or fixed with one of them). In placing shared residence as the first option, it is likely that the authors of the new code intend to overcome the perceived reticence of judges to use such orders (see e.g., Neyrand and Mekboul [1993], whose qualitative work showed that a majority of magistrates were strongly opposed to alternate custody).

Taking as its starting point the exercise in common of parental authority, each parent must not only maintain relations with the child, but also respect the ties that exist between the child and their other parent. The role of the judge appears to have become one of enforcer in this regard: *Le juge peut prendre les mesures permettant de garantir la continuité et l'effectivité des liens de l'enfant avec chacun de ses parents* (the judge is able to take measures to assure that effective ties between the child and each of their parents are maintained). This respect towards parental ties now extends in the same way to grandparents.<sup>15</sup>

The new law respects the primacy of agreements made between parents, except where this does not sufficiently protect the best interests of the child or where the consent of parents has not been given freely. Where parents have reached an agreement on the issues of residence and maintenance, whether between themselves or through a lawyer, this is then 'ratified' by the judge. In this way, the agreement then becomes official. Where parents are unable to agree, the judge may propose mediation. If accepted, parents are then referred to a family mediator. Whether parents are able to reach an agreement or whether the judge ends up ruling in the case of disagreement, the residence of the child may be alternated between the parents or consist of an exclusive residence. At the request of one of the parents or where parents are unable to agree, article 373-3-9 (para. 2) provides that a judge may, unless the interests of the child are not best served, order a *titre provisoire* (a trial period of shared residence of a fixed term of which the duration is chosen by the judge),<sup>16</sup> at the end of which time the judge will make a definitive ruling on the residence of the child, choosing between shared residence or

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<sup>15</sup> Art. 371-4 of the Civil Code declares that children have a right to maintain personal relationships with their *ascendants* and vice-versa.

<sup>16</sup> Generally speaking this term will not exceed six months.

residence with one parent. This ruling is always taken unless otherwise agreed by the parents, who are able to choose the mode of organisation that suits them best.

Thus, the main change introduced by the 2002 reforms resides in the power of the judge to impose shared residence on parents who have asked for exclusive residence and to take provisional measures where necessary. Nevertheless, private agreements made between parents continue to rank above decisions made by the judge, who is unable to impose shared residence on parents who have chosen another form of residence.

## **Summary**

Until recently, the legal frameworks governing the practice of shared residence in Britain and France could be seen to run on a similar trajectory, underpinned by a judicial acknowledgement of the possibilities of shared residence but a reluctance to implement orders in its favour because it was still seen as being contrary to the (best) interests of the child. When we look at the changes that have been brought about in France through the 2002 reforms of parental authority, marked differences are becoming apparent in the respective French and British family law approaches. While the making of shared residence orders in the British context, in theory, is now given consideration in a wider range of cases, in practice they remain little used. Even where shared residence is agreed between parents through conciliation approaches, agreements may be more likely to be drawn up under the auspices of ‘consent orders’ rather than shared residence orders. Indeed, sole residence in favour of one parent with a contact order in favour of the other parent looks set to continue within the British context in ways that contrast sharply with that of France.

A much more explicit framework within which shared residence can operate has now been adopted in France. While no presumption of shared residence exists it has nevertheless become a legitimate option for families within French family law, challenging the very heart of post-separation family practices through explicitly questioning a ‘default’ primary carer model. Parents now have the right to ask specifically for shared residence as a preferred arrangement, even when one parent is not

in agreement. Indeed the judge is even able to order a trial period of shared residence at the end of which time they will rule on shared or exclusive residence. This contrasts starkly with the infrequent use of such orders within the British context and the emphasis that is placed squarely on private ordering alongside a primary carer model. By setting this option on an equal footing with other models of post-separation family life, a ‘no one size fits all’ philosophy still prevails in France, yet simultaneously undercuts any discrimination that may exist against a shared residence model. This arguably allows for a period of ‘bedding down’ without setting parents in opposition to each other, in particular, by taking up opposing positions in order to establish himself or herself as the resident parent. Consequently, it sends a message that no one parent will automatically become the primary carer. As indicated by initial court statistics around shared residence from the French Ministry of Justice (see Chapter 2, pp. 45–7), this is likely to result in a substantial increase in such arrangements being made.

Looking back over the past 20 years, French liberal progressive thinking can be seen to have moved from the pre-1987 law reforms, where custody was exclusive and indivisible, to a situation where the charge of the children could be shared by parents through the joint exercise of *l'autorité parentale* in addition to remaining exclusive through the notion of custody. This latter notion finally disappeared in 1993 and was replaced with that of the *résidence* of the child, until finally *la loi du 4 mars 2002* explicitly introduced the possibility of *résidence alternée*.

By contrast, the British trajectory has remained arguably less progressive in this respect, with the infrequent use of shared residence orders looking set to continue. In the British context, shared residence is not yet considered as an acceptable alternative to run alongside a residence–contact model, even where the differences between these two designations have become increasingly marginal in practice. Where *de facto* shared residence is taking place, it is likely to be framed as residence and contact. The infrequent use of such orders is, in large part, due to two factors: first, the desirability of such arrangements being tied to high levels of cooperation between parents; and secondly, the overriding principle of non-intervention and private ordering, which would make the necessity of such orders redundant. However, by continuing to use such orders in moderation may be acting to influence not only the perceptions of the various family

law professionals/officers engaged in resolving issues of post-separation care arrangements but also parents themselves.

In policy terms, the above comparison of legal change in both national contexts highlights the different impacts that French liberal progressive thought and UK conservatism must have for policymakers. In France, shared residence is now an explicit option for separating families, and as such, explicitly challenges the lone-absent parent divide. Therefore, we should expect some difference in the way policy responds to such arrangements. In Britain, shared residence remains a possibility but only through private ordering. It remains implicit because orders are seldom used, leaving a lone-absent parent divide intact. This situation is therefore likely to be reflected in policy terms.

## **Chapter 4**

### **The policy contexts in Britain and France**

#### **Introduction**

This chapter examines the policy contexts within which shared residence currently operates in Britain and France. By relating the practice of shared residence to the development of social policies within each nation, tensions that exist in the ways in which family law articulates with family policy are highlighted. The chapter opens by looking at the absence in policy of non-resident parents as a group in terms other than financial (via child support). This general obscurity has arguably led to a disproportionate focus by researchers and policymakers into the circumstances of those households in which children may spend a majority of their time; namely, lone parent households. While there has been widespread societal recognition of the economic and social difficulties faced by ‘lone parent families’ (a now standard category of analysis in labour force surveys, poverty and living standards research and income and expenditure surveys), many of whom face significant levels of disadvantage (Duncan and Edwards, 1997; Martin and Millar, 2004; Millar and Rowlingson, 2001; Neyrand and Rossi, 2004; Rowlingson and McKay, 2002), no such acknowledgement has been accorded to what may be termed ‘non-resident’ parent families.

#### **The non-resident parent family: costs and consequences**

There is a growing recognition that a substantial number of non-resident parents, not unlike their resident parent counterparts, may also suffer from low levels of income and face significant levels of disadvantage (Bradshaw *et al.*, 1999; Bull, 1993; Henman and Mitchell, 2001). As we have established, non-resident parents’ levels of contact with non-resident children may vary enormously, with a substantial number having only irregular and infrequent contact and many disengaging altogether. Indeed, research indicates a general decline in fathers’ involvement with their children after divorce that continues to decline as time passes (Dudley, 1991; Fustenberg and Harris, 1992; King, 1994; Seltzer, 1991). While some commentators have pointed to such disengagement as resulting from the problems and pain experienced in attempting to maintain close



relationships with children on a part-time basis (Kruk, 1993; Simpson *et al.*, 2003; Spillman *et al.*, 2004), the extent to which this general decline in father involvement is due to financial constraints remains a relatively under-researched area that would benefit from further exploration.

For those that do sustain significant levels of contact however, these disadvantages can be compounded quite considerably for the particular subgroup of non-resident parents on low income and ineligible (in relation to their biological non-resident children) for any form of family welfare assistance. Attempts to maintain their family life as a family unit, while being required, in addition, to financially support their children within a second home may prove extremely difficult for these particular fathers. As Mitchell (2003: 326) points out: ‘The receipt of benefits and child support maintenance confers a real benefit on the parent who is treated as the main carer’.

Comparatively little research has been undertaken into the behaviours, expenditures and needs of non-resident parents in caring for their children during contact and periods of residence (see however, Bradshaw *et al.*, 1999; Woods, 1999). In Australia, Henman and Mitchell (2001), using a budget standards methodology – that is, a specified basket of goods and services that a particular hypothetical household is judged to need at a specific time and place in order to achieve a particular standard of living – are the first to attempt an appreciation of the costs non-resident (usually male) parents face in exercising regular contact with their children. Crucially, in their estimate they found that the costs of contact for one child, where contact represents one-fifth of the year (20%), represent approximately 40 percent of the same costs of that same child in an intact couple household with a medium income and more than half of the costs of that child in a household with low income. What becomes clear from these figures is that: ‘the total cost of children substantially increases when parents separate’ (Henman and Mitchell, 2001: 495). Their analysis identifies that:

the cost of caring for children through ongoing and regular contact for a significant, but minority, proportion of the year is considerably greater than a pro-rata proportion of the costs of caring for children by an intact couple with care of children for 100 percent of the year. (ibid.: 497)

The authors cite household infrastructure and transportation as two of the main reasons affecting the apparently high costs and go on to suggest that these ‘unavoidable’ costs may explain why lower-income households face proportionally higher costs of contact than higher-income ones, and why this cost does not markedly change with modest changes in the level of contact.

In terms of social security and taxation policy alone, the relevance of these findings, that suggest not only that the costs of non-resident contact are often likely to be relatively high, but ‘can at times approach half the total costs of caring for a child for 100 percent of the time’ (ibid.: 517) are significant, when we take into account the lack of financial assistance afforded non-resident parents towards the costs of non-resident parenting. While it is difficult to quantify the extent of economic hardship experienced by non-resident parents, it may be significant that Bradshaw *et al.* (1999: 60) found that just over half of the non-resident fathers in their 600-strong sample were receiving some form of social security benefit.

Henman and Mitchell (2001: 518) suggest not only that it would be reasonable to share family benefits between separated parents, but that they should be shared at a reasonably low threshold of contact care. The authors point to Australia’s family tax benefit system which was modified to share family benefits between separated parents on a time-based pro-rata basis where the non-resident parent provides contact-care equivalent to 10 percent or more of the year. These ideas resonate with those of Giddens (1998), who explores the idea of ‘co-operative co-parenting’ in his discourse on the Democratic Family and suggests that fathers be granted greater parenting rights, together with the means by which to discharge their responsibilities.

### **At the intersection of family law and family social policy**

At present, while Britain and France essentially promote a ‘shared-’ or ‘co-parenting’ ideal through the courts as the post-separation arrangement that sits best with the ‘best interests of the child’ principle, their systems of family social policy have operated on the basis of one eligible parent, and therefore one household, being able to access family-related benefits associated with the care of a particular child.

However, it is likely that any moves towards the sharing of benefits in cases of shared residence would prove highly controversial and problematic. The issue does not exist solely within a vacuum of care or indeed welfare. If benefit-sharing were facilitated further, it may not only require levels of expenditure that may be deemed unacceptable, but any government introducing such moves would run the risk of being accused of providing perverse economic incentives for families to split up. Nevertheless, recent reforms in France, spearheaded by Ségolène Royal – in her former role as Minister for the Family, Children and the Disabled in the Jospin Government – have more recently led to the option of sharing family allowances in cases of shared residence, the first payments of which were made in June 2007. The following section looks at current provision in each national context and highlights how seemingly marginal differences in the ways in which Britain and France have been approaching these issues are becoming increasingly more pronounced.

## **Family benefits in Britain**

The main benefits available for families containing young people are Child Benefit and Child Tax Credit. Families of working age in receipt of means-tested benefits – Income Support (IS) or income-based Jobseeker's Allowance (JSA) – may also receive additions to benefit for dependant children/young people, if they are not already receiving Child Tax Credit for them. At present, the benefits system in the UK remains predicated upon the notion of one primary caregiver. Although legislation in this area is ostensibly gender neutral, it delivers gender-biased outcomes – most main carers are women and most non-resident parents are men. Families who may wish to practice shared residence may be prevented from doing so by the way in which the benefits system operates. There are a number of material conditions that need to be satisfied in order that shared residence may operate effectively, not least among them the requirement of two homes and two sets of incomes. In the case of financial hardship the state will only provide for one, even where shared residence has been decided by a court order. In the UK, all forms of welfare for the purposes of childcare recognition flow from receipt of Child Benefit; a family allowance claimed by about 7.4 million families in respect of around 13 million children (HM Revenue and Customs, 2007).

### **Child Benefit**

Crucially, in law, financial consideration and assistance are not based on an individual 'needs' criterion or even 'residency' *per se* (i.e. the parent with whom the child spends the most amount of nights with each week, as defined in s.12 of the *Children Act* 1989), but on who holds the Child Benefit. The *Social Security Contributions and Benefits Act* 1992, s.141 provides that: 'benefit is the entitlement of anyone who is responsible for the child in the week for which benefit is paid'. However, s.143(3) goes on to provide that: 'where apart from this subsection, two or more persons would be entitled to Child Benefit in respect of the same child for the same week, only one of them shall be entitled'. Schedule 10, establishes an order of priority and where dispute arises, the Secretary of State 'in his discretion' determines the issue (Sch 10, para 5).

At present, a father in an official (i.e. under a s.11(4) shared residence order, *Children Act* 1989) or unofficial shared-residence role whose children reside with him for roughly half the year is excluded from all assistance, precluding, as an example, the need for an extra bedroom for children in terms of Housing Benefit, regardless of whether or not the child[ren] may in reality spend four nights a week or two weeks in four at the home of the 'non-resident parent'. Issues of housing can prove a major obstacle in the development of shared residence approaches. Indeed, Burgess (2005: 62) draws our attention to increasing anecdotal evidence that suggests that 'fathers' applications for more parenting time are being refused, not because the father himself is seen as a risk to children, but because he cannot provide suitable housing'. The courts have declared in *R v Swale Borough Council Housing Benefit Review Board ex parte Marchant* [1998], that a child who spends time in the homes of each parent counts as an 'occupier' only in the home of the parent who is 'officially responsible', namely, the parent who receives the Child Benefit.

While the possibility of apportioning Child Benefit or redirecting it to someone else, 'wholly or in part', does exist at the 'discretion' of the Secretary of State (Reg. 34 of the Social Security [Claims and Payments] Regulations 1987 [SI 1987/1968]), this discretion is considered an 'exceptional measure' and exercised restrictively. For example, in situations where the parent has been unwilling or unable to apply the Benefit in the interests of the child. In addition, the Secretary of State is charged with

two key considerations: namely, to maintain the simplicity of the system together with administration costs, at present around two percent of the total sum payable.

More recently, the manner in which this discretion is exercised has been considered in relation to the practise of shared residence by the Administrative Court in the cases of *R (Barber) v Secretary of State for Work and Pensions* [2002] EWHC 1915 (Admin), [2002] 2 FLR 1181 and *Chester v Secretary of State for Social Security* [2002] All ER(D) 133. In the first case, Mr Barber and his former wife shared, in equal measure, the residence of their son. Mrs Barber refused to share the Child Benefit and the Secretary of State refused to direct that it should be shared. In this case, Tucker J saw ‘no justification for a change in [the] system’ and refused Mr Barber’s application for judicial review, stating:

I do not see how [Reg. 34] can possibly be interpreted as empowering the Secretary of State to split or rotate child benefit in the manner sought.

However, in *Chester*, the two children spent weekdays with their father and weekends with their mother, while both parents shared the residence of their two children in equal measure during the school holidays. Though Child Benefit had already been awarded to the father, Collins J granted Mrs Chester an order quashing the decision, claiming that there was nothing in principle preventing the Secretary of State from redirecting Child Benefit for one of the children to Mrs Chester during the holiday periods. In addition, that some scope existed under Reg. 34 to allow Mrs Chester to receive part of the Benefit.

These two decisions cannot easily be reconciled. While Mitchell (2003: 324) suggests that the case of *Chester* is unlikely to challenge the way in which the Secretary of State exercises his discretion, these cases nevertheless clearly signal a marked sea change in terms of the recognition accorded this issue within the policy framework. In addition, as suggested in the introductory chapter, it is plausible that the rise in non-resident mothers may contribute in some measure to changes in wider judicial attitudes and behaviours as well as those of society more generally.

The concept of one 'primary carer' in social security legislation has also been challenged successfully in a landmark decision of the Court of Appeal (*Hockenjos v. Secretary of State for Social Security* [2005]) in relation to a benefit supplement to Jobseeker's Allowance (available in 1997) payable in respect of dependant children. While the particular benefit supplement no longer exists, it is not yet possible to determine the impact on social security that this case will have more generally.

Since Child Benefit – as a 'passport benefit' – provides official recognition of childcare responsibility, thereby providing access to all other forms of welfare provision, it is necessary to examine some of the ways in which non-eligibility affects non-resident parent families. Housing Benefit, for example, is assessed on a restricted rent basis for non-resident parents as single people. Many non-Child-Benefit holders will have lost access to the family home, whether by exclusion or sale. While the detrimental consequences of relationship breakdown on the housing situation of lone parents has been well documented (Bradshaw and Millar, 1991; Bull, 1993; Buck, 1994; McCarthy and Simpson, 1991; Symon, 1990), there is some evidence that a non-resident status can mean housing problems are even worse than for those of lone mothers (Bull, 1993, cited in Bradshaw *et al.*, 1999: 70). Bradshaw *et al.* (1999), tell us that nearly two-thirds of their survey sample who had been home owners claimed to have handed over either the whole, or part, of the property value and that around 15 percent claimed they had nowhere for the children to stay overnight when they visited them. This has greatly affected the 'residential mobility' of non-resident parents (Flowerdew *et al.*, 1999), many becoming reliant on relatives to provide 'suitable' accommodation for themselves and their children (McCarthy and Simpson, 1991; Sullivan, 1986). Indeed, Bradshaw *et al.* (*ibid.*: 71–8) go on to point out that a third of single non-resident fathers in their sample were living with family or friends and that well over half (56%) of all fathers had had to rely at some point on family and friends; the majority of these, with parents: 'For the fathers there was a net movement out of owner occupied and local authority dwellings, and a net movement into private rented and living with friends and family' (*ibid.*:73).

Within the British context, the non-resident parent may be disadvantaged in a variety of different ways, including not being eligible for: Tax Credits; Pension Credit (formerly, Minimum Income Guarantee); Child Trust Fund vouchers; maintenance/child support

payments; child care costs; Home Responsibilities Protection; basic retirement pensions protection; State Second Pension; Social Fund assistance with Community Care Grants, budgeting and crisis loans; Housing and Council Tax Benefit, available to 'lone parents' with dependant children; and while access to higher education and training are assisted by educational maintenance allowances and student loans, for non-resident parents in education student loans are, for the purposes of Child Support Agency assessment, counted as disposable income, albeit in the absence of a dependant children's allowance and/or 'Home Responsibilities Protection'.

In April 2007, the transitionally protected higher rate of Child Benefit for lone parents that was available until July 2006 was phased out as the standard rate for the first eldest child increased to £18.10 per week. The income-based Jobseeker's Allowance (conditional on actively seeking work and perhaps forcing acceptance of low-paid jobs) automatically reduces opportunity for contact with children as the childcare element of Child Tax Credits is not available. Similarly, eligibility rules for Income Support payments rarely recognise the parenting responsibilities of non-resident parents. The consequences are a de-legitimisation of one parent's familial needs. There have, however, been some recent changes to the rules governing Child Benefit, and couples with more than one child can now elect that both partners receive Child Benefit, with the children allocated between them. The one proviso is that only the partner with the eldest child will receive the higher payment for the eldest child. While this provision is likely to be welcomed by non-resident parents with shared residence, it nevertheless places families with only one child at a distinct disadvantage. HM Revenue and Customs (2007: 1), has explained that 'the family' is now 'included as a single unit containing all children. This has resulted in the count of recipient families being about 25 thousand lower than the number of recipient claimants.'

### **Child Tax Credits**

The relatively new, and somewhat controversial, Child Tax Credits (CTC) also follow from receipt of Child Benefit. In April 2003, a new system of family support was introduced in the UK. The CTC brought together the child-based elements of Working Families' Tax Credit, Income Support, Jobseeker's Allowance, Disabled Person's Tax Credit and Children's Tax Credit. The Working Tax Credit (WTC) replaced Working Families' Tax Credit and was extended to those in work who do not have children, yet

includes an element for helping with the cost of childcare. Both benefits are income-based, and are not tax allowances. The amount of credit is based on the claimant's income for the tax year, with awards running for a period of twelve months. Transferred from the Department for Work and Pensions, responsibility was moved to the Inland Revenue, which has now become HM Revenue and Customs (HMRC).

Child Tax Credits, and the childcare element of the Working Tax Credit is categorically unable to be apportioned. Under the *Child Tax Credit Regulations* 2002, Reg. 3.1, or the 'normally living test' as it is more commonly known, CTC is available to those who are responsible for at least one child or qualifying young person who is 'normally living with him'. While a specific recognition exists that children may live across households, Reg. 3.2 (the 'main responsibility test') provides that, where separate claims are made, the child is to be treated as the responsibility of only the claimant who has (comparing between the claimants) the main responsibility for him. Claimants should jointly elect which one of them satisfies the 'main responsibility test', failing which a decision will be made by the Inland Revenue Board (now HMRC). Within the first twelve months of operation three cases were heard in the High Court and the Court of Appeal.

### **Child support**

The high numbers of lone parents reliant on means-tested benefits has put non-resident parents' financial obligations centre stage. Indeed, it has been the continual low level of maintenance paid to lone mothers that arguably led to the introduction of the *Child Support Act* 1991 (Skinner, 1999):

Government cannot ensure that families stay together. But we can and must ensure that proper financial provision for children is made by their parents whenever it can be reasonably expected. (DSS White Paper, 1990)

The current basis for child support obligations in Britain is 'biological' parenthood (Rowlingson and McKay, 2002).<sup>17</sup> The biological link between parents and children takes precedence over whether or not parents are married, cohabiting or live apart. Advances in DNA testing can now resolve issues of disputed paternity. Through this

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<sup>17</sup> Rowlingson and McKay (2002: 175) identify four models of child support obligation; biological parenthood, marital parenthood, social parenthood and state support.



model, the idea of life-long responsibility that sexual encounters may carry is enforced. It also aims *inter alia* to deter 'irresponsible' sexual behaviour and thereby reduce the cost of state support.

The Secretary of State has power to regulate for cases of shared residence (where both parties have 'parental responsibility'). Regulation 20 of the Child Support (Maintenance Assessment Procedure) Regulations 1992 (SI 1992/1815) (old regime) and regulation 8 of the Child Support (Maintenance Calculations and Special Cases) Regulations 2000 (SI 2001/155) (new regime) state that:

Where there are two or more persons not living in the same household, each of whom provides day-to-day care for the child and where at least one of them is the child's parent, a parent is to be treated as an absent parent if he provides such care to a lesser extent than the other parent.

'Day-to-day care' is defined as care of not less than two nights per week on average. Where care is provided to the same extent, the absent parent is the parent not in receipt of Child Benefit.

In cases of shared residence, the current Child Support Agency (CSA) formula (2000) places fathers with a low income in a precarious situation should he attempt, or be 'permitted' to share the care of his children. If the money does not follow, conflict over who will become the 'primary carer' is likely to arise, as neither parent will be able to afford to be the absent one. If parents share care equally, only the one who is claiming Child Benefit will be the so-called 'Parent With Care' (PWC). As a result, even where care is shared in more or less equal measure, the non-resident parent may still have to pay the PWC nearly half of what he would have to pay if he never saw his child, regardless of whether or not the PWC possesses a similar or higher salary than the non-resident parent.

Certainly, under New Labour, some account has been taken of fathers' caring contributions. Child-support obligations are reduced relative to the amount of care-time they provide. Where residence is shared, maintenance is decreased on a sliding scale. Under the new regime, the formula contained in para. 7 of Sch. 1 to the Act (as

amended by the *Child Support, Pensions and Social Security Act 2000*) states that, where there is one qualifying child the reduction is: (a) one-seventh if the child spends 52–103 nights with the non-resident parent in a 12-month period; (b) two sevenths for 104–155 nights; (c) three sevenths for 156–174 nights; and (d) one-half for 175 nights or more.

It should be noted that in attempts to see more parents receive maintenance than under the current system, a recent child maintenance redesign is currently underway, as outlined in the ‘Child Maintenance and Other Payments Bill 2007’. The new measures aim *inter alia*: to place greater emphasis on private agreements, which are known to have higher compliance rates; replace the Child Support Agency (CSA) with the Child Maintenance and Enforcement Commission (C-MEC); and to increase compliance rates through more effective enforcement measures (DWP, 2007). It is unfortunate that neither the 2007 Bill, nor the Child Support White Paper that preceded it (DWP, 2006), has made explicit what will happen with ‘shared residence’ cases.<sup>18</sup>

## Family benefits in France

In France, a range of legal welfare benefits is available to support families in their daily lives. These *prestations familiales* are set out under Section L511-1 of the French Social Security Code and include: *Allocations familiales* (Family Allowances); *Complément familiale* (Family Income Supplement); *Allocation de soutien familial* (ASF) (Family Support Allowance); *Allocation journalière de présence parentale* (APP) (Parental Attendance Allowance); *Allocation de parent isolé* (API) (Single Parent’s Allowance); *Forfait logement* (Flat-rate Housing Benefit); *Prestations d’accueil du jeune enfant* (PAJE) (Benefits for the maintenance and accommodation of infants); and *Allocation de rentrée scolaire* (ARS) (Back-to-School Allowance). This section focuses specifically on the payment of family allowance, access to social housing and the payment of child maintenance. While access to social health insurance is also an important area to discuss relative to shared residence, it is suffice to say here that as a consequence of the 2002

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<sup>18</sup> It was mooted that some changes be made to the ‘shared-care’ regime regarding the use of gross income, as opposed to net income, for calculations to which there was some scepticism and concern that this would cause hardship for non-resident parents and their second families. (DWP, 2006: 100).

reforms, the legislation on *securité sociale* (national insurance) has been modified so that children may benefit from social health insurance through both parents, rather than through a single allocation, as has been the case up to now (for a discussion of how access to health insurance affected respondents, see Ch. 8).

### **Payment of family allowance**

In principle, family allowances in France are paid to the resident parent; namely, the person who has ‘effective and permanent charge’ of the child. However, family allowance continues to be evaluated, taking into account both the presence of the children in the home as well as their alternative whereabouts. That part of the allowance due to the family is paid directly into the account of the primary carer. In any event, the family allowance board can decide, at the request of the president of the *conseil générale* of the judgment panel, to continue making payments to the family as long as they undertake the ‘moral and material care’ of the child (or with a view to facilitating its return to the home).

There are no specific or statutory regulations governing to whom family benefits will be paid. *La Caisse nationale d’allocations familiales* (CNAF)<sup>19</sup> has stated that any allocation should be made in favour of the parent according to the level of care provided. Where parents are unable to agree, *les juges aux affaires familiales* (JAF) may be called to settle the dispute (CA Lyon, 4 juin 2002). Until recently, all family benefits have been unable to be apportioned. The beneficiary is, in principle, the parent who supports *la charge effective et permanente de l’enfant* (the effective and permanent charge of the child). Therefore, a sole beneficiary must be designated. However, while the CNAF requires that a beneficiary must be agreed between the parents, since *la loi du 4 mars 2002*, this designation of payments may be reversed at a time agreed between the parents. Where parents cannot agree, the decision may also be made through the courts. For example, a Court of Appeal decision in Aix-en-Provence (CA Aix-en-Provence, 23 janvier 2003) resulted in all family benefits being paid to the father during the years ending in an even number (i.e. 2004, 2006, etc.) and all benefits to be paid to the mother during those years ending in an odd number (i.e. 2003, 2005, 2007, etc.).

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<sup>19</sup> The official public body which funds the whole range of family allowances, administers the family sector of the national Social Security service and oversees the network of 124 *Caisse d’Allocations Familiales* (CAF), dividing resources between them.

Since May 1st 2007, in cases of shared residence, parents are now able to ‘make a statement of division’ with equal sharing of *allocations familiales* (family allowances). It is now enough for parents, whether divorced, separated or formally co-habiting, to express their choice for benefit sharing by filling in a form with their CNAF. The first of these payments were made in June 2007. However, other family benefits will still need to be allotted to one parent only. Crucially, in order for the benefit to be shared, the residence of the child(ren) must be shared equally between the two parents. If one of them does not agree to the division, the case will be turned over to the *tribunal* (the Social Security court). Parents will also be able to continue to indicate a single allocation if they so wish. The calculation of the amount of the family benefits in the event of division will take into account possible changes in the configuration of the family, for example, in the event of recomposed families. In these cases, children from the other family will be taken into consideration in the final calculation.

### **Social housing and related benefits**

With respect to *la politique familiale*, support for families in France comes not only in the form of *des prestations familiales* (family benefits) but in the form of *aides au logement*, which provides help with the costs of housing, perhaps through state-sector accommodation such as the *habitation à loyer modéré* (HLM) (affordable housing). Formerly known as *habitation à bon marché* (HBM) (cheap housing), HLM is a block of flats where the accommodation is intended and reserved for families on low incomes.

*Les aides au logement* is a means-tested benefit that reduces the expense of housing for families. *Loyer* and *mensualités d’emprunt* (rent and monthly borrowing/loans) are calculated according to a scale of charges that takes account of the resources and family situation of the beneficiary. *Aide personnalisée au logement* (APL) (housing benefit) applies to certain types of housing depending on the family situation and characteristics of the occupants: the *APL-Location* relates to tenants, while the *APL-Accession* relates to first time property owners or homeowners in receipt of certain loans (e.g. the *prêt aidé à l’accession à la propriété* [PAP], a loan for first-time home buyers, and the *prêt conventionné* [PC], a regulated mortgage loan). *L’allocation logement à caractère familiale* (ALF) concerns young married couples (who occupy the same household)

married less than 5 years and families (couples and lone parents) with dependant children, relatives or persons with disabilities that are not covered by the APL.

Until recently, children that lived with one parent ‘intermittently’ have not been taken into account in any assessment of resources permitting access to social housing. However, in order to facilitate further the exercise of ‘parental authority’, the new law of March 2002 has meant that the way in which the resource ceilings of beneficiaries of social housing are assessed have been revised. Measures have now been established that enable those with responsibility for children of separated couples, whatever their *habituelle* residence, to benefit from having their family circumstances taken into account.

The *arrêté* (decree) of 19 novembre 2001 (JO 27 nov) has now modified the *arrêté* of 29 juillet 1987, relative to the limit of resources of beneficiaries with regard to *les habitation à loyer modéré* (HLM) as well as the new state aid within the rented sector and tenants of social rented housing. These changes represent concrete measures to facilitate the exercise in common of parental authority. This new text goes some way to resolving the problems faced by separated couples, whether married or not, regarding the serious matter of housing their children. The child of separated parents is now *considéré comme vivant au foyer de l’un et de l’autre parent* (considered as living at the home of both parents) in the calculation of resource ceilings relative to finding access to social housing (HLM) or in the payment of a *supplément de loyer de solidarité* (SLS) (a rent supplement) for tenants. The parent who does not have the *garde effective* (effective custody) of the child and who wishes to be able to accommodate them may now benefit greatly as a result of these changes.

### **Maintenance**

In respect of shared residence, a recent French study has shown that no child maintenance was paid between parents in 70 percent of such cases (Moreau *et al.* 2004; see also Martin and Math, 2006). In the remaining 30 percent of cases, parents’ earnings were substantially different. However, even here, these payments were generally nominal and amounted to less than €200 per month per child. This finding is significant when taking into account that the mean salary of these fathers was found to be 20 percent higher than the mean salary of men in the general population and that only 20

percent had asked for *aide juridictionnelle* (legal aid) – a means tested benefit for paying lawyer fees – compared to an average of 67 percent.

Martin and Math (2006: 6), explain that the current system of *pension alimentaire* (child maintenance) in France does not have as its objective the reduction in possible costs to the state. Rather, an implicit objective is to promote the negotiation between both parents to reach an agreement and thus make this arrangement more acceptable.

Finally, it is worth returning briefly to the work of Skinner *et al.* (2007) in order to compare the way child support policy operates in cases of shared residence in France and Britain relative to other countries. The authors show that ‘shared care’ arrangements do have an impact on what the non-resident parent is expected to pay. In 10 of the 14 countries surveyed, national informants reported that the obligation to pay could be reduced to nil where there was ‘roughly equal shared care’ (Denmark, Norway, Belgium, Canada [Ontario], Finland, France, Germany, Netherlands, Sweden and USA); although Germany remained something of an anomaly, in the sense of there appearing to be ‘no consistency in accounting for shared care’ (ibid.: 78). In five of these countries (Belgium, Denmark, Finland, Netherlands and Sweden), the obligation to pay could be annulled completely, irrespective of disparities in the parents’ incomes. This, the authors explain, ‘reflects an understanding that if parents share care, then the costs of rearing the children will be met equally between them’ (ibid.: 67). In the remaining countries (Australia, New Zealand, UK and Austria), the non-resident parent was still expected to pay child maintenance.

## **School policies**

While the timing of change within Britain and France has differed somewhat with regard to wider shared parenting practices and school policies, the general thrust of changes in both national contexts has been clear; namely, having been underpinned by a greater emphasis on fathers’ involvement in their child’s education. As Goldman (2005) explains, this has stemmed from a recognition that fathers’ involvement in their child’s education leads to more positive outcomes for children:

Fathers' greater interest and involvement in their children's learning and in schools are statistically associated with better educational outcomes for children, including better exam results, better school attendance and behaviour, and higher educational expectations. There are also associations with better social and emotional outcomes for children. (Goldman, 2005: 12)

This involvement holds the same purchase regardless of the marital status of parents.

### **In the UK**

In June 2000, the then Department for Education and Employment (DfEE) (now the Department for Education and Skills [DfES]) circulated a 'guidance on the law' to all head teachers, entitled: *Schools, "Parents" and "Parental Responsibility"*. This circular provides the definition of 'parent' contained in the Education Act 1996. The first category included is, 'all natural parents, whether they are married or not'. The DfES and its schools also regard unmarried fathers without parental responsibility as full parents and no distinction is made between the resident and non-resident parent.

Everyone who is a *parent*, as defined above, has a right to participate in decisions about a child's education; even though, for day to day purposes, the school's main contact is likely to be a parent with whom the child lives on school days. Schools and LEAs must treat all parents equally, unless there is a court order limiting an individual's exercise of parental responsibility. (DfEE, 2000: at para. 12)

Some specific areas of rights, of which examples are given in the guidance, include: the right to receive information; the right to participate in activities; the right to be asked to give consent; and the right to be told about any meetings involving the child. In addition, relevant court orders are asked to be noted in a pupil's record, together with the registration of parental details. The Education (Pupils Registration) Regulations 2006, concerns the contents of the Admissions Register and Attendance Register, which must be kept by the proprietor of every school. The Regulations include 5(1)(c):

the name and address of every person known to the proprietor of the school to be a parent of the pupil and against the entry on the register of the particulars of any parent with whom the pupil normally resides an indication of that fact and a note of at least one telephone number at which the parent can be contacted in an emergency. (DfES, 2006b)

Regarding the provision of information to parents, the school:

should make the resident parent aware that the non-resident parent is entitled to be involved in the child's education [and that] ... if the non-resident parent contacts the school, and requests access to information, the school should provide it to that parent direct. (DfEE, 2000: at para. 16)

Local Authorities are also being encouraged to analyse their services still further in relation to fathers' participation in their children's schooling. Since 2006, *The Equality Bill* now places a duty on public services to consider the impact of their policies on practice in a range of equality areas, including gender. It is now a requirement for family and children's services to gather data about fathers unless there is evidence that it is not necessary. They are also required to assess the extent to which men (or women) may be discouraged from using a particular service, for example, by looking at the extent to which they present a welcoming environment.

In April 2007, the Gender Equality Duty (GED) came into force. All public authorities in England, Wales and Scotland must now demonstrate that they are promoting equality for women and men and that they are eliminating sexual discrimination and harassment. Goldman (2005), tells us that father-specific policies in the education sector are becoming more developed in general and have culminated in a guide of good practice for teachers on how to best engage fathers in schools.

### **In France**

With regard to education policy in France, measures were announced by the then *Ministre déléguée chargée de l'enseignement scolaire* (Minister for education), Mme Ségolène Royal on 3 May 2001 (to take effect as from September 2002), to facilitate shared parental authority. Directed at the children of separated parents, these measures



in many ways can be seen as the precursor of the 2002 reforms of parental authority. The measures aimed, in particular, to simplify administration for parents and school authorities in gathering requisite information regarding the registration of children both in schools and in the civic registry. Though the right to be informed of school results has been in place since 1993, there is now a requirement that the school informs both parents of any decisions concerning the child and that any school notes or reports must be sent out to both parents. Crucially, the addresses of both parents must be made available at the beginning of each school year, so that all notices and decisions that are issued can be communicated to each of them. In France, the child now has what essentially amounts to two legal addresses.

## Summary

Shared residence clearly has a financial cost for parents. For the resident parent this may come about through a reduction in maintenance payments and, in France, through the sharing of some family benefits. For the non-resident parent there are more obvious expenditures. Alternate residence necessitates the need for two homes with room enough to house the child or, indeed, children of different ages and perhaps different sexes. There still exists a lacuna where non-resident parents in post parental-separation situations are concerned. Although a substantial proportion of children are living across households, albeit by degrees and in wide variation, they are doing so in something of a legal and socio-economic vacuum. Similar situations *vis-a vis* the interest in shared residence exist in France and Britain, though France can be said to lead the way in terms of facilitating policy. Through *la loi du 4 mars 2002*, and the notion of *coparentalité* underpinning it, attempts are being made to reach out to wider constituencies and underline the emphasis placed on the parental authority underpinning *la loi Malhuret* 1987. In this way the wider public are being educated to comprehend that the preservation of biological ties between parents and their children has become of central significance in the regulation of post-divorce, -separation and -cohabiting situations.

There is no doubt that the landscapes of family law, policy and practice are changing. The ways in which British and French governments are responding to these changes

reveal important differences. In large part, this can be seen as a result of the different ways in which the family is conceptualised. Maclean and Mueller-Johnson (2003), for example, explain how the family in France is traditionally highly valued and seen as a cross-generational institution at the heart of society:

[T]here is a strong school of thought in France that the purpose of contact lies in maintaining the concept of the family over time, through a line which flows from generation to generation. This conceptualisation of the relationship between parent and child argues for the provision of help and support in maintaining this relationship where there is no common household. (Maclean and Mueller-Johnson, 2003: 123–4)

Thus, support for parents in France can be seen to be based ‘on more developed theorising about the relationship between parents and children across generations, as well as across households’ (ibid.: 2003).

In the British context, the variability of possible configurations of family living arrangements and relationships, have increasingly led to doubts about the usefulness of such frameworks over time. Rather, the very concept of ‘the’ family as a unit for social observation has been considered as both value-laden and based on outmoded assumptions (Fox-Harding, 1996; Hantrais, 2004).

With regard to school policies, it would appear that similar measures have been put in place in both countries inasmuch as advising headteachers that a non-resident parent is to be regarded as being on an equal footing to the resident parent. The respective guidance measures should facilitate non-resident parents’ approach to schools in both countries. In practice, however, fathers in the empirical part of the thesis paint an altogether different picture in Britain (see Ch. 8).

In both Britain and France, the notions of private ordering and *coparentalité* or ‘co-parenthood’ are supporting the current evolution in child custody arrangements and ‘negotiation’ is the key word for the success of these arrangements. The uncharted territory for fathers in the negotiation and management of shared residence in this landscape is of utmost importance to future research, and which my thesis intends to

open up in order to establish benchmarking and definition. The methods chosen for this research have been carefully thought out on the basis of the above analysis and follows in the next chapter.

# **Chapter 5**

## **Research methodology**

### **Introduction**

This chapter sets out the methodological strategy employed within the thesis. It begins by outlining the rationale for using a comparative research design in conjunction with qualitative in-depth interviews and looks at the choice of Britain and France as the two countries for comparison. This is followed by an examination of the fieldwork procedures and data generation, where particular attention is paid to how the definition of shared residence was operationalised for the fieldwork and then to the specific sampling strategy that was employed. This also includes a discussion of the ethical complexities that present themselves for consideration together with some more general reflections on the nature of the interaction between the researcher and the researched. After providing a summary discussion of key respondent characteristics, I then turn to looking at how the data has been interpreted and analysed. The chapter ends with a short section looking at the possible implications of the methodology for the research findings.

### **Research design**

This research uses a qualitative methodology, specifically in-depth interviews, in a cross-national comparison of two countries. A qualitative method is well suited to explore aspects of fathers' experiences of negotiating and managing shared residence, since it 'is based on methods of sampling, analysis and explanation that accept and seek to work with complexity, detail, diversity and difference' (Smart *et al.*, 2001: 175), and can therefore provide rich texture to description of respondents' experiences. Since this particular approach to generating data is both flexible and sensitive to the social context in which the data is produced, its validity is also enhanced. The rationale for a comparative research design derived from a belief that 'we can understand social phenomena better when they are compared in relation to two or more meaningfully

contrasted cases or situations' (Bryman, 2001: 52). The cross-national research design allows us to discover how shared residence manifests itself within different national contexts and enables us to answer the question: 'how are other countries responding to such developments?' Comparing and contrasting the different socio-legal, social policy and cultural settings against which fathers' experience and practice takes place, we are able to increase our knowledge of different nation-specific systems while simultaneously contributing to a greater understanding of this phenomenon more generally.

The choice of Britain and France as the two countries for comparison was made primarily on the basis of a 'most similar systems design' (Przeworski and Teune (1970). Britain and France are often highlighted for their very different approaches to welfare (Esping-Anderson, 1990) and family policy (Gauthier, 1996; Commaille and Martin, 1998); both 'pro-family', but Britain staunchly non-interventionist in approach and France explicitly pro-natalist. Nevertheless, within the context of this thesis, these countries are similar in respect of levels of social and economic development, levels of divorce and cohabitation, roles of women, and the changing expectations and behaviours of men, together with similarities in jurisprudential thought – albeit this last being highly influenced at the supranational level.

By focusing on a relatively homogeneous field in this context, causal relationships could be best-appreciated and marginal differences evaluated. This created an increased capacity for in-depth analyses and multiple dimensions could be utilised as elements of control, while additionally controlling for 'extraneous variance' (Peters, 1998: 30). As John Stuart Mill claimed, it is through reducing the number of interacting variables that the means to observe the influence of factors one wishes to study becomes possible (1846; 1961; cited in Dogan and Pelassy, 1990: 133).

With regard to more pragmatic considerations, my working knowledge of the French language was sufficiently comprehensive as to conduct a series of in-depth qualitative interviews and engage with the French academic literature in this field. The inclusion of France within the thesis not only represented a sound theoretical comparator country, but also two contributory factors: (a) having a daughter who is a French national resident in Paris, and (b) having worked in France for several years in the 1990s, afforded a certain advantage in accessing initial respondents through friends and personal contacts. Finally,

France, being Britain's nearest continental neighbour meant that fieldwork could take place in the form of a series of shorter visits as opposed to one or two longer stays throughout the length of the study. Since timing played a crucial role in the fieldwork process, in particular given the nature of the sampling strategy (discussed below, pp.103–8), the fact that Paris could be readily reached by Eurostar within three hours from London at short notice played an integral part in my planning.

### **Defining shared residence**

Defining shared residence was a crucial part of the study, as this set the criteria for inclusion for the interviews. Shared residence is defined within the study as 'a form of family life in which children *reside* with each parent for roughly equal amounts of time by *alternating their home life across two households*'. As pointed out in chapter 2, the terminology used to describe a situation in which children spend roughly equal amounts of time living with each parent is context specific. The use of the term 'residence' has been used within the research definition as it implies a household infrastructure in ways in which, arguably, terms such as (shared) 'parenting' or (shared) 'care' do not. Although exploring non-staying contact was always going to be an integral element of the research and subsequent analysis, the criterion by which respondents were to be selected for the study was nevertheless in relation to the number of overnight stays within a set period that a child would make with each parent. This, it was felt, would give the broadest insight into the management of such arrangements; a central aim of the thesis. The act of residing with one's parents therefore needed to be reflected in the subject terminology and definition.

With regard to the alternating nature of the arrangement *for the child*, strictly speaking, shared residence may also include situations in which it is the adults who alternate their own residence around the child's one home. Indeed, such approaches were discovered to have taken place within the French sample of fathers in the study, albeit in the initial stages following parental separation. However, this approach to post separation family life, commonly referred to in the UK as 'nesting', is likely to be relatively rare as a long term solution for the majority of families, in particular given the high costs likely to be involved in maintaining three separate dwellings. In addition, it was felt to be worthy of a more in-depth investigation, given the unique set of challenges thrown up by this type of multi-residence situation. Therefore, although the practice of 'nesting' is discussed in

the research findings (see Ch. 6 for further discussion), it can be seen as a unique residence model and as such has not been reflected within the more generic and context-specific definition used within this thesis.

Having provided a justification for the use of the term ‘shared residence’ and its subsequent definition, it becomes necessary to explain how such a definition was put into practice or ‘operationalised’ for the fieldwork. What, for the purposes of a working definition, would constitute shared residence over that of shared parenting in terms of the number of overnight stays a child might make in each household over the course of a year? There are a number of issues here. First, there is an issue of the time period over which to measure shared residence. There may be children who alternate their residence over longer periods of time, perhaps on an annual basis. These situations are most likely to occur where parents are living considerable distances from each other, most usually in different countries or, indeed, on different continents. But such long-term movements were considered as a study worthy of separate investigation and placed outside the remit of this thesis. Here the focus is on shared residence as experienced within a period of about one year, giving an opportunity for some exploration of how shared residence was experienced over time. Secondly, there is the issue of how much time the child or children would have to spend with each parent for this to be counted as shared residence. One option would have been to allow the fathers themselves to identify themselves as being in shared residence. That approach would have provided an opportunity to explore fathers’ own definitions. But it could also have meant a large variation in experience and since the focus of this study is on the day-to-day management and experience of shared residence, such a potentially wide variation would have made comparisons difficult. So some external definition was considered preferable.

### **Shared care: a 30–70 ambit of residence**

This research is exploratory, in the sense of wishing to discover the variety of ways in which shared residence might manifest itself within different national contexts. Since no definitive guide exists as to what constitutes such arrangements and what does not, it was felt that establishing a reasonably wide framework may be more appropriate than restricting the sampling criterion to strictly equal divisions of time. As indicated in chapter 1, there were numerous reasons for adopting a reasonably wide ambit of residence, not least among them the desire to capture the variety of arrangements that

may exist over and above an ‘every-other-weekend and half the school holidays’-type contact arrangement and in order to explore the inter-changeable nature of a residence status against a broader canvas than strictly equal divisions of time might allow for.

These arguments led to the adoption of a sampling criterion in which at least 30 percent of the child’s time over the year was spent resident in each household. This 30–70 ambit of residence represented what I felt to be an appropriate starting point and working definition given that the intention of the research was to explore the intersection of resident and non-resident parenting rather than set out a definitive guide as to what might constitute such arrangements. The extent to which shared residence might, in conceptual terms, move within or below this spectrum was something I felt may become more evident as the research unfolded. Indeed, chapter 10 highlights some of the difficulties inherent in attempting to define such arrangements in light of the research data and reflects upon the concept of shared residence more generally and the ways in which it can be considered both ephemeral and multi-dimensional. Putting this definition into practice was crucial to the fieldwork, and this is discussed further below.

### **Sampling strategy**

Fifteen fathers were recruited from France and twenty from England and Wales (representing the British sample) using a ‘snowball’ referral technique, and the data analysed here were derived from a series of face-to-face, in-depth, qualitative interviews of between 60 and 90 minutes duration. The majority of interviews in Britain took place between May 2005 and May 2006 and in France between June 2005 and August 2006. However, pilot interviews had also been carried out in both Britain and France in November 2004 and June 2004 respectively during the early stages of the study in order to embed a clear vision of the research and help establish the nature of the final topic guide. These early ‘unstructured’ interviews were subsequently included in the final analysis, given that the father’s narratives had covered all the essential topic areas included in the later ‘semi-structured’ interviews.

Respondents were drawn from across several urban, provincial and rural locations within each national setting. Since one of the principal objectives of the thesis was to discover differences in the way shared residence manifests itself and is experienced, I felt that casting the net reasonably wide would be more appropriate than attempting to



generate regional comparability cross-nationally (i.e. culturally, geographically or economically similar regions). Additionally, I felt that by not restricting the sampling pool to any one specific area, the potential to produce a sample of fathers with more diverse and varied (social, educational and economic) backgrounds would be enhanced. Also, the nature of the sampling strategy – namely, a snowball or networking referral process – made it likely that respondents would not necessarily live within close geographical proximity to those contacts whom they had referred. Indeed, the majority of interviewee’s social and familial networks appeared to stretch well beyond both the local and the regional.

**Table 5.1 The geographical spread of respondents by location type**

<i>Location type</i>	<b>British respondents</b> <i>n=20</i>	<b>French respondents</b> <i>n=15</i>
Village	4	2
Small town	5	2
Large town <sup>a</sup>	6	5 <sup>b</sup>
City	5	6

*Note:* <sup>a</sup> Where a town has a population of <20,000 it has been classified as large; <sup>b</sup> the category ‘large town’ also includes several communes in the *banlieue*/metropolitan area of Paris.

Table 5.1 shows the urban, provincial and rural areas from which respondents were drawn. In the British sample, five respondents were living in cities, six in large towns (where the population exceeded 20,000), five in smaller towns and four in rural villages. Although it had been anticipated that interviews may potentially take place in the North of England and Scotland, the snowballing process together with the limited number of respondents being sought – between 15 and 20 within each sample group – led to all the British interviews being carried out in the South of England (a total of 16 fathers) and South Wales (a total of 4 fathers). In the French sample, six respondents were living in cities, five in large towns (which included the metropolitan area of Paris), two in smaller towns and two in rural villages.

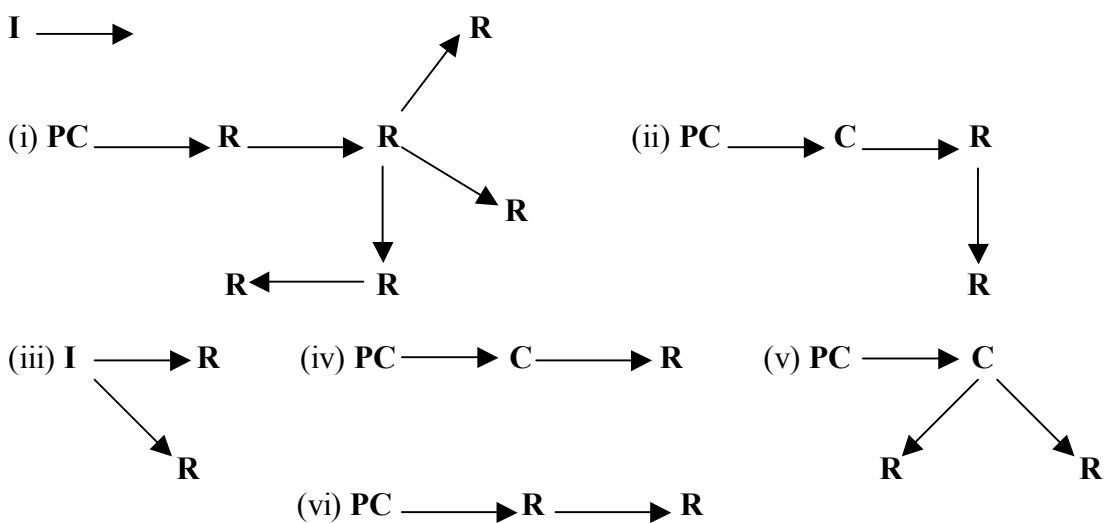
In order to gain access to research volunteers, I used a participant referral process known as ‘snowballing’. This sampling technique relies upon the social contacts between individuals to trace additional respondents. Having accessed an initial sample of fathers sharing the care and residence of their children through personal contacts and family,

where they were not known to me personally, participants were then asked during the course of the interview if they knew of other fathers who also had a shared residence arrangement with their children. This process was then repeated until the requisite number of interviews had been achieved. I envisaged that establishing two groups of between 15 and 20 fathers would bring a sufficiently wide range of experiences and arrangements to the study within each national setting without running the risk of becoming too quantitative in the structure and consequent analysis of the data. This line of questioning served a dual purpose: not only did it provide a means by which to access additional respondents by asking whether they would be willing to pass on details of the study and relevant contact information through a prepared 'letter of introduction' (Appendix 1, pp. 297–300), but more generally in order to provide an indication of how prevalent this type of arrangement might be within the social networks of this particular sub-population of separated and divorced fathers.

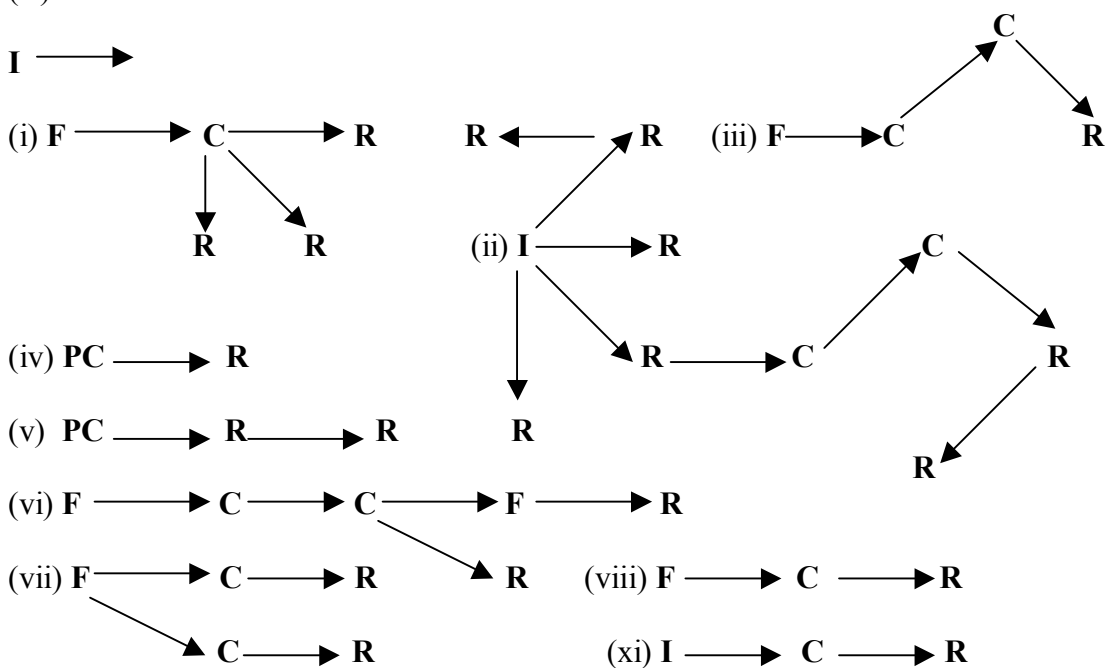
Participants were often familiar with several families with similar care arrangements to their own. Some even had other family members with shared residence of their children or siblings whose partners were involved in such an arrangement with biological children from a former relationship, and agreed to pass on the relevant details of the study to them. Several fathers indicated that they knew of mothers – both 'resident' and 'non-resident' – sharing the residence of their children and offered to put me in touch with them. However, I felt that using these mothers in order to access the fathers for the study may have been to have an unfair expectation of them and therefore I did not follow up these particular contacts. Many more participants were aware of other fathers who either had a more 'standard' (Smyth, 2005) type contact arrangement – often falling outside the 30–70 percent 'shared residence' criterion set out for the purposes of this study – or of fathers who were experiencing problems concerning regular contact with their children, despite their deepest wish to be more involved as parents in a caring capacity. In the event, only one British participant, who described fathers in his situation as being 'as rare as hens' teeth', was unaware of at least one other family in which children were alternating their home life from one household to another in roughly equal measure.

**Figure 5.1 The snowball referral process**

*(A) French networks*



*(B) British networks*



**Key:** I = Investigator; R = Respondent; PC = Personal contact; C = Contact; F = Family

*Note:* There were other lines of contact and enquiry that were pursued during the sampling process. The above Figure shows only those networks that led to a respondent taking part in the study.

In order to help the reader make sense of the snowballing process and clarify which social networks were used to snowball from, Figure 5.1 provides a pictorial representation of how employing a 'network' sampling technique in the study worked in practice. Rather than a continuous string of respondents leading neatly on, one to the other, lines of contact were often messy and complicated. In some instances, they worked to access a series of one, two or more respondents. However, they were equally likely to stop dead in their tracks, lead off at tangents or appear to dry up before unexpectedly continuing at some later date. Each network series (of which there were 9 in the British sample and 6 in the French sample) begins with either: myself as the investigator (I), in those cases where I have approached respondents directly; with a contact known personally to me (PC), of which friends, acquaintances and work colleagues are included; or with a member of my own immediate or extended family (F). These initial leads would either take me directly to a respondent (R) or to an intermediary or 'third party' contact (C), who in turn would lead me directly to a respondent, to another point of contact or to a member of their family, also indicated by the letter (F). What becomes clear is that a snowballing process is unlikely to lead neatly and directly from one respondent to the next. Instead, an intermediary or series of intermediaries are likely to be involved at some point, acting, for some, to put a little distance between respondents. Finally, it should be noted that despite all but one father in both sample groups claiming to know other families with shared residence, more often than not, this did not lead directly to a further research participant.

Establishing whether fathers fitted my criteria of having at least 30 per cent of the child(ren)'s residence with them over 12 months was an important element in obtaining the sample. This criterion was included in the letter of introduction or 'participant information sheet' that set out the parameters of the study to potential participants, so the first point of contact set this out as a condition for inclusion. Then, when I first spoke to or met the fathers I probed further to try and ensure that their shared residence did fit this definition. In most cases, this was relatively unproblematic, as the children were clearly residing with their fathers for at least 30 percent of the year at that time, though as we will see below, over time there had been changes in the shared residence arrangements.

However, this did not work for all the men that I had contacted, or who contacted me. Three fathers (one British and two French) contacted me about taking part in the study without fitting the requisite sampling criteria. In each instance, the number of nights their children spent resident with them over the year fell below 85, even when taking account of often lengthy periods of residence over the summer vacation period and therefore fell unquestionably outside the 30–70 percent ambit of residence framework. In these cases, details had generally been passed on verbally and therefore these fathers had not seen or read through the letter of introduction and I was aware of the potentially sensitive nature of rejecting their often extremely enthusiastic offers to take part. In these instances, I was left with a choice: to go ahead and interview them in spite of the residence framework criterion in the hope of bringing an extra dimension to the analysis, or to thank them for getting in touch, reject their offers to take part and risk offending them, in the sense that somehow their stories might not be as valuable as those with perhaps what might seem only marginally more contact. In the event, I determined to stick to the participant criteria if I were not to run the risk of sabotaging the comparator guidelines I had set out. In all three cases, I explained that for the methodological reasons of this particular study there were criteria to adhere to, but I would be interested in retaining their details for possible future research projects, which they seemed quite happy to agree to.

The aim of the study was to explore the experiences of fathers who were sharing the residence of their children whatever their ‘official’ residence status might be within a legal or policy context. But the fathers included in the sample were within a particular range on a contact–residence continuum. Those at the upper limit could also be potentially defined as ‘lone’ parents, while those at the lower end could be defined as ‘non-resident’ fathers with contact. It is interesting to note that very few respondents thought of or described themselves in these terms, despite being affected sometimes quite considerably by the status of these divisions consigned to them by administrative welfare mechanisms. These issues are discussed further in Chapter 8.

### **Alternative avenues of sampling considered for the research**

A ‘snowballing’ technique was not the only sampling strategy I had considered. I had been particularly interested to discover the extent to which respondents were aware of other shared residence arrangements from within their children’s school networks.

Anecdotally, being married to a teacher, my own social networks include those who teach within the (mainly primary) education sector. On discovering the nature of the research I was currently involved in, many ventured to point out that they were aware ‘off the top of their heads’ of several cases where both parents shared the day-to-day-care of their children, despite their being separated, within most class years. Several acquaintances offered to pursue the matter of accessing respondents for me via their head teachers (since there would be issues of gate keeping involved in accessing fathers in this way) were I to write a formal letter indicating the nature of the research.

While this may have proved a relatively straightforward procedure in Britain through the use of personal contacts as initial gatekeepers to head teachers and parents, in France the process may have proved a far more bureaucratic one. That said, French educational authorities would be far more aware of the actual residence circumstances of their pupils at an administrative level given that recent educational reforms (discussed in Ch. 4) now require French schools to collate records and addresses at the beginning of each school year of all those children whose parents live apart. In this sense a readily available sampling frame potentially existed for fathers who share the parenting, though not necessarily residence, of their children. There is certainly cause to believe that a follow-up quantitative study should be carried out attempting to measure the incidence of this type of family living arrangement. Determining the numbers through schools could well prove to be one way of doing this. As I was now aware that an opportunity existed to follow up a sample through this network of teachers, I had considered it as a potential source from which to sample respondents in the unlikely event that my snowballing procedure were to dry up at any point.

My interest in the possibilities of accessing fathers in this way and what it might be able to reveal about the cultural implications of the practice of shared residence grew substantially when I encountered a shared residence ‘cluster’ in one school-class year group within the British sample. Within this one class of approximately 28 pupils, around one-third (as far as it was possible to establish, raising the possibility that there may have been more) of the children were growing up in households that did not include both biological parents: six of these were alternating their residence between their separated parents on a roughly equal basis; one child no longer had contact with their father (again as far as it was possible to ascertain); one child’s father was

deceased; while only one child had a more 'standard' type contact arrangement, living with their mother on a full-time basis while having regular contact with their father. Of the four fathers who agreed to be interviewed among this particular cluster, several were also aware of other children and parents with shared residence arrangements in other year groups within the school.

In itself, the fact that so many children were living in households without both biological parents was not that surprising given current demographic figures in Britain and France relating to divorce and separation. In the French context, for example, Tabet (2004: 12), points out that within more urban areas these numbers can be much higher and in parts of Paris exceed 50 percent of children within the primary education sector alone. What was surprising in this sample, however, were the numbers of children in a shared residence arrangement; nearly one-quarter of the total number of children in the class and around three quarters of the total population of children whose parents had separated.

### **Ethics, guidelines and approval procedures**

Throughout the research design, its implementation and fieldwork, ethical issues were at all times given due consideration in line with the departmental guidelines relating to the University of Bath's institutional code of ethics and practice and the 'ultimate test of reasonableness'. The way in which participants were to be approached, the nature of the topics under discussion in the interview process and how I would deal with sensitive issues were all considered at length in conjunction with my research supervisor. I was also familiar with the standards and guidelines set out in various research ethics frameworks, such as those provided by the Social Research Association and the British Sociological Association, all of which fed into the way my research was approached and undertaken.

In addition, the opportunity had been made available to me within the Department of Social and Policy Sciences at Bath to attend a research support group for those undertaking sensitive qualitative research. This forum, attended by both staff members and research students alike, provided ample opportunity to discuss the kinds of ethical issues that might arise in the course of such research, both in general as well as in relation to more project specific issues and dilemmas.

The process of snowballing raised several ethical considerations in addition to methodological ones, since, by its very nature, the potential to conflict with assurances of anonymity given to respondents within the study were ever present. The possibility arose that, despite the use of pseudonyms, it may be reasonably easy for respondents to identify those contacts whom they had introduced to the study and vice-versa. This possibility was made all the more acute given that most respondents (particularly those within the French sample) had expressed a desire to be kept informed of any subsequent research findings or publications.

I addressed the potential dilemma this issue raised by discussing it with the respondents themselves. While the majority appeared quite happy that pseudonyms were being used in the study, those who had been asked did not appear at all perturbed by their own contacts potentially recognising their accounts. Presumably, as one respondent pointed out, they would already be familiar with their personal details regarding their family histories and current arrangements with their children. It is certainly likely that a mutual sharing of such a life-changing experience as bringing up children in a shared residence capacity would inevitably be conducive to mutual discussion and exchange of personal information. As an incidental, this does question any stereotype that sees men keeping everything 'to themselves', or the idea that men do not 'talk' to each other. Indeed, it is arguable that once within the realm of the private sphere, issues generally take on a similar shape regardless of the sex of the parent and perceptions around gender stereotypes generally become blurred.

By the same token that the potential identification possibility could act to deter respondents from being completely honest and open in their accounts, it was also possible that it could equally act to enhance the validity of the findings by acting as what Denzin (1989), or Lincoln and Guba (1985), might term a 'legitimation practice'. Respondents would be unlikely to represent themselves in ways overtly dissimilar to the realities of their lives where the possibility of their accounts being recognised was ever present.



### **Drawbacks and advantages of ‘snowballing’**

The very notion of a ‘shared residence’ population is inherently problematic. There is no readily accessible sampling frame for the population of fathers with shared residence arrangements from which to draw a sample. This is compounded by the likely inclusion within this population of both ‘non-resident’ and ‘resident’ fathers. Within this context, the choice of ‘snowballing’ as a method to gain access to potential respondents was intimately linked to the issue of sampling bias. As Burton (2000: 315) reminds us: ‘Networks can tend to be homogeneous in their attributes, rather than providing links to others who have different social characteristics’. Indeed, despite participants reporting a range of socio-economic backgrounds they nevertheless tended to be older men in their 30s and 40s and in paid employment. While this may indicate that certain structural barriers to the practice of shared residence may have been more easily overcome than if participants had been in their late-teens or early-20s and on low-income and/or unemployed, it is equally likely that a certain bias is likely to have occurred in the samples due to the nature of the snowball sampling technique itself. However, despite the potential drawbacks of snowballing, a diversity of experiences and perspectives appear to have been brought to this study.

Although it had been considered that snowballing might potentially lead to a lack of heterogeneity within the sample groups, it was felt that this type of bias would be preferable to other types of bias. In particular, a plan to access participants through fathers’ groups had also been an initial consideration. However, since these groups were likely to provide samples desirous of shared residence (or certainly better contact arrangements), they would perhaps tend to report happenings that act against it, rather than any potential positives or facilitation. They might even be more likely to produce a sample more prone to conflict and/or litigation between parents.

When we look at Sandra Kielty’s (2005) recent work with non-resident mothers, in which 85 percent of the sample were accessed through *Mothers Apart From Their Children* (MATCH) – the voluntary organisation that provides a nationwide support network for women who are non-resident mothers and the ‘sister’ organisation to *Families Need Fathers* (FNF) – we can see why such concerns as just mentioned would be justified. The mothers’ narratives bear striking similarities to those of aggrieved parents among fathers’ groups more generally. Kielty (2005: 8–13) describes how

mothers saw resident fathers ‘as rigid gatekeepers who actively sought to limit mothers’ influence in their children’s lives. These women indicated that, rather than safeguarding the needs and interests of children, the legal system had worked as an instrument for manipulative and needy fathers’ and that many, ‘were profoundly dissatisfied with the level of involvement and the position that they held in their children’s lives’. Kielty goes on to indicate that where mothers were opposed to father residence, views were particularly negative and polarised and parental relationships were likely to remain ‘intractably hostile’, potentially resulting in adverse consequences for children.

While samples accessed through mothers’ or fathers’ groups would certainly be valid in themselves, it is clearly important to recognise the limitations of such samples. In the event, I have tried where possible to control for those fathers who have had some connection with self-help groups, at the stage of the interview where respondents were asked to describe the nature of support they had received; though fathers tended to volunteer discussion on this subject without any prompting.

It is certainly true that, ‘concerns about external validity and the ability to generalise do not loom as large within a qualitative research strategy as they do in a quantitative research one’ (Bryman, 2001: 99). Indeed, the concepts of reliability and validity, most commonly associated with quantitative research, are often replaced within a qualitative context by notions of ‘legitimation practices’. Strategically designing and employing these practices can add to the credibility of the qualitative methodology, thereby substantially strengthening the legitimacy of the research. Lincoln and Guba (1985) suggest that qualitative research meet the criteria of ‘trustworthiness’; that includes ‘credibility’, ‘transferability’, ‘dependability’, and ‘confirmability’. Denzin (1989), draws our attention to the notion of ‘verisimilitude’; namely that because all narratives are constructed fictions, the ‘truth’ of the story is based on whether or not the story is believable to the listener or reader. Hammersley (1992), meanwhile, proposes ‘relevance’ as a criterion, in terms of the topic’s importance within its substantive field or the contribution it makes to the literature in that field. Finally, Bryman (2001) reminds us of how ‘ecological validity’, formulated largely in the context of quantitative research, fares rather well within the qualitative context. The research design for the current study is especially disposed to this kind of criterion.

### **The interview process**

The interviews can be described as ‘semi-structured’ in the sense that a clear set of topic areas were addressed while, at the same time, allowing for a large degree of flexibility in responses. Respondents had experienced a variety of routes into a shared residence arrangement, whether through a legal framework, a mediated one, through their own private arrangements or a mixture of the above. In this sense, it was essential to be flexible regarding the manner and order in which topics were explored. Indeed, while the topic guides (Appendix 2, pp.301–5) served as a useful reminder of thematic areas, it became clear early on within the interview sessions, and as I became more familiar with weaving the topic areas to be covered into the interview process, that any attempt to follow an ordered series of themes became more of a hindrance than a help.

In France the guide was almost always dispensed with completely. It very often felt intrusive to refer to the guide and increasingly, the interviews were returning to what they had been during the early or pilot interviews, more unstructured than anything else. The more ‘open-ended’ the interview, the more respondents themselves were able to ‘speak their minds’. While the topic guide that appears in the appendix testifies to the study’s engagement with a series of topics designed for semi-structured interviews, in practice they are really on a continuum with unstructured interviews and throughout the interview sessions often slid back and forth along the scale (Denscombe, 1998).

Throughout the interviews I attempted to be as unobtrusive as possible, while making sure each theme was explored in some measure by the respondent, relative to their own experience of negotiating and organising the shared residence of their children. During the interviews, participants were encouraged to elaborate on individual points of interest and thereby develop their own accounts of what were essentially very complex and sensitive issues. This allowed respondents to use their own words and develop their own thoughts. As Denscombe (1998: 113) reminds us:

Allowing interviewees to ‘speak their minds’ is a better way of discovering things about complex issues and, generally, semi-structured and unstructured interviews have as their aim ‘discovery’ rather than ‘checking’.

Nevertheless, the topic areas remained more or less consistent in an effort to 'standardise' a series of themes, and in this sense stopped short of a 'grounded theory' approach (Glaser and Strauss, 1967). The comparative nature of the study required that the structure of the interview would encompass, albeit broadly, the same issues among both French and British respondents. While the topic guide can act to enhance the consistency of data collection, thereby ensuring relevant issues are covered systematically, themes were nevertheless largely self-selecting, as respondents covered most areas without needing to be prompted.

Arguably this 'standardisation' does not present any ambiguity in approach regarding the nature of the interview (i.e. semi-structured or unstructured), since the themes set out in the topic guide in the main present aspects and practices of shared residence that are likely to be shared in any event, albeit likely to be experienced in a variety of different ways. For example, the fathers will all co-parent with the children's mothers, the children will all be within their respective education systems and subject to the same legal and social structures of each country, with perhaps some regional variation, whether or not they individually play a more or less prominent role in their individual arrangements.

The one-to-one interview also had the advantage of being relatively easy to set up and steer. Additionally, since each narrative stemmed from one source, albeit influenced in some measure by the researcher (see section below concerning aspects of the researcher and the researched), it became reasonably easy to locate specific ideas, views and opinions with specific respondents. As Denscombe (1998: 114) reminds us, there is only 'one person's ideas to grasp and interrogate, and one person to guide through the interview agenda'.

The interviews were all of between 60 and 90 minutes duration. This period of time represented the natural course of each interview. It was rare for respondents to speak for under an hour, while 90 minutes generally provided respondents with sufficient time within which to cover all aspects. Each interview was audio-taped and then transcribed and, in the case of the French interviews, translated. Some field notes were usually taken soon after the interviews and on occasions during the interview itself. These notes often served as a mental reminder of areas, questions and issues to return to during the course

of the interview. The field notes also provided a record of contextual information relating to aspects of non-verbal communication. Additionally, when the audio-tape had been switched off at the end of an interview, there were often further interesting points raised by respondents, and the notes served as a mental reminder of these.

At the end of each interview I would offer respondents a small gift of a book token for their children in recognition of their assistance and the time and thought they had given in taking part in the study and, equally, in recognition that the children were after all the focus of their accounts. A book token was considered the best means by which to thank respondents for taking part in the study and in keeping with the academic thrust of the research. These gifts, amounting to £10/€15 where there was one child and £15/€20 where there were two or more children, had not been mentioned prior to the interview and were very much appreciated, coming as a welcome surprise to most respondents. In a few cases they were rejected as being unnecessary but were appreciated all the same.<sup>20</sup>

### **Location of interviews**

The location of interviews themselves proved to be a far more interesting and enjoyable aspect of the research process than I had envisaged. I had anticipated that the majority of interviews would take place in the homes of respondents. Indeed, in some ways I had hoped this would be the case, as a means by which to get a first-hand sense of how their lives were lived. Taking into account that this may not have proved convenient or desirable for some participants, the choice of a mutually convenient meeting place was suggested in the information sheets outlining the research and in discussion (telephone conversations/email) prior to interview, in terms of timing as well as location.

The majority of British interviews did take place in the homes of respondents, as did several within the French sample.<sup>21</sup> These home meetings ranged from informal sessions to being invited for lunch or dinner. One French respondent, for example, had invited me for lunch together with his two daughters, having explained to them who I

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<sup>20</sup> I wish to thank the ESRC for providing me with the means to fund these gifts through the fieldwork support grant made available to me during the course of my research.

<sup>21</sup> At all times, where fieldwork was being carried out in England, Wales or France, I made sure that someone had been informed of my whereabouts and my itinerary. The opportunity for debriefing and support where difficulties might arise were discussed prior to the fieldwork in conjunction with my supervisor.

was and why I wished to spend an hour or so talking with their father in the garden after lunch while they played.

However, a variety of locations materialised, particularly in the French sample. In one of my first interviews in France, a respondent wished to meet at lunchtime. On reflection I am sure I would have done well to invite this respondent for lunch in a café/restaurant. However, my fears at the time to find a quiet and secluded place where we could talk ‘in private’ led us instead to spending the early afternoon in the *Père Lachaise* cemetery over a soft drink and a sandwich. It soon became apparent, however, that many of the French respondents were available only during the lunch-time period. This led to several interviews being carried out in cafés, at their behest, which invariably became a working lunch. I was initially extremely sceptical that these interviews would work well, in the main, given the very ‘public’ (and noisy) nature of our surroundings. I would, after all, be asking/opening up very personal and sensitive questions/areas of their lives. In the event, these respondents spoke most candidly and openly and perhaps in even greater detail than others in more discreet locations. Each respondent appeared oblivious to the fact that others were nearby, potentially eavesdropping on the interview. Upon reflection, I find two cultural reasons for this: first, that of course, France (and Paris in particular), is a café society, where people tread the terraces and take uninhibited conversation as a matter of course; secondly, I had clearly been away from France too long and lost touch with the general appetite for a working lunch!

### **The researcher and the researched**

The way in which a researcher conducts the setting up and execution of an interview is by no means the only relevant criterion by which to consider qualitative research fieldwork. ‘Cross-perceptions’ between the researcher and the researched are ever present and can act in subtle ways to influence the generation of the data. This final section of the chapter looks briefly at the nature of this relationship, discusses issues of reciprocity, the sensitive nature of family research and explores aspects of interviewing men and their relationship to the public and private spheres.

Arguments have been levied that ‘matching’ on key socio-demographic criteria can enrich researchers’ understanding of respondents’ accounts and thereby create an

environment more conducive to open discussion, building closer working relationships and thereby enable more in-depth explorations of sensitive issues. This may, for example, be the case where the interviewer and respondent share the same social class or ethnicity, or where shared experiences exist more generally. As Lewis (2003: 65) explains, '[t]he introduction of power imbalance into the interview setting is unlikely to be conducive to mutual discussion, particularly if issues of oppression or discrimination are highly relevant to the research question'. In respect of gender, feminist researchers have argued that a 'cultural affinity' exists between women interviewers and participants by virtue of their subordinate social status (Finch, 1984; Oakley, 1981). The case has also been made in feminist approaches for more intimate reciprocity in the interviewer-participant relationship through researchers sharing information about themselves with the interviewees.

There were certainly indications that both a 'cultural affinity' coupled with a certain reciprocal intimacy were to some extent apparent in respect of my own interview relationships. It is possible that these may have been born of a shared social status in respect of men's position relative to post-separation caring. However, I am inclined to believe that these aspects are likely to be present regardless of the gender dimension when the subject matter is placed squarely within the confines of the private sphere and intimate relationships.

Discussing personal relationships, from partners to children to parents and wider family members, particularly within the context of separation and divorce, was always likely to elicit strong emotional reactions from the participant fathers. As such, strategies for dealing with sensitive issues were discussed with respondents prior to each interview. My respondents were very open and frank as they described the nature of their relationship breakdowns and how this had affected their lives and those of their children. For the majority of fathers, these very personal accounts often brought up feelings of intense sadness, pain, fear and occasionally resentment and anger at some stage within the interview. In these instances, I would let myself be guided by what the fathers themselves were or were not willing to address or talk about. Even on those occasions where a father became somewhat tearful, an acknowledgement of their distress was usually enough to then be led by the participant themselves as to whether they wished to continue, take a break or move on to a different topic.

There was certainly a sense that a ‘special relationship’ existed between myself and the respondent fathers, above and beyond what I would consider to be a ‘typical’ interview situation (if such a thing exists!). I find several reasons for this: first, the subject matter itself, which revolved around private and emotionally charged issues, could often trigger strong emotional responses from the participant fathers, thereby creating a very personal and intimate ‘bond’; secondly, the nature of the snowballing sampling procedure had meant that I would rarely arrive at an interview ‘cold’. Since I had come, in some sense, ‘recommended’ by friends, family or acquaintances of the respondents, there was a distinct sense that I was more than just a researcher and this, I believe, acted to give me something of an ‘insider’ status. Thirdly, this ‘insider’ status was augmented still further where participants were keen to learn a little about myself and my interest in the subject matter and became aware (where they were not already aware) that I too was a ‘family man’ with several children spanning a diverse age range, in addition to which I had experience of living apart from one of my children. The fact that this particular child was a French national only served to strengthen this ‘insider’ status among the French respondents, who now saw me as ‘one of their own’. Nevertheless, this perhaps greater acceptance made me aware that certain assumptions might now be made about my understanding of their own situation and that I would need to be aware of the pitfalls of gaining ‘insufficient explanation or clarification . . . because of assumptions created by [any] shared experience’ (Lewis, 2003: 66) we might have in common.

While Rubin and Rubin (1995) stress the need for qualitative interviewers to achieve empathy without becoming overly involved, others, particularly those writing on feminist approaches, argue that there is ‘no intimacy without reciprocity’ (Oakley, 1981: 49). In the event, I recognised that my research relationships would have to be negotiated. Therefore, where fathers asked me direct questions about my own personal history, I would invariably respond while making sure that the focus of attention was drawn back to the interview and the key research issues, thereby striking what I considered to be a realistic balance in expectations. This openness also played a pivotal role in developing trust and a shared working relationship in the mutual process of data generation.



## Respondent characteristics

This section explores respondent characteristics. Table 5.2 shows personal and family status at the time of interview.

**Table 5.2 Personal and family characteristics at interview**

<b>Current circumstances of fathers</b>	<b>British sample (n=20)</b>	<b>French sample (n=15)</b>
<i>Age at interview<sup>a</sup></i>		
20 to 29	1	0
30 to 39	11	5
40 to 49	7	7
50+	1	3
<i>Employment status</i>		
Professional/semi-professional	8	6
Manual/skilled	9	9
Student/unemployed	3	0
<i>Ethnicity</i>		
White	19	14
Other	1	1
<i>Marital status at interview</i>		
Remarried/married for first time	3	0
Living with new partner as married/cohabiting	4	4
Single/has partner	3	2
Single/no partner <sup>b</sup>	10	9
<i>Fathers with and without new families<sup>c</sup></i>		
Married/cohabiting with further children	6	1
Married/cohabiting without further children	1	3
Single/ with further children	3	1
Single/no further children	10	10
<i>Geographical proximity to former partner</i>		
>1 mile	8	8
>5 miles	8	5
>15 miles	2	2
<15 miles	2	0
<i>Age at separation</i>		
20 to 29	3	1
30 to 39	13	10
40 to 49	4	3
50+	0	1
<i>Approximate N°. years since separation</i>		
0–4	12	10
5–10	8	4
11+	0	1

Notes: <sup>a</sup> Mothers were reported as being, on average, two years younger than fathers in both sample groups; <sup>b</sup> In two cases within this category, fathers were still officially married to their former partner but were living alone, awaiting final divorce; <sup>c</sup> Further children within this category include both new biological children and step-children.

This section examines the central personal and familial characteristics of respondents. Table 5.2 shows that the fathers were mainly aged 30-39 in the British sample and were a little older in the French sample. In both countries, there were nearly as many professional or semi-professional workers as there were manual and skilled workers. All but three fathers in the British sample were in paid employment. Only one father in each sample group was of a non-white ethnic origin. In terms of their marital status, the vast majority of respondents were single or where they did have a partner were not living with them. Only seven fathers in the British sample and four in the French sample had remarried or were cohabiting with a new partner. Of these, six out of the seven British fathers now had further children from these new partnerships; either biological children ( $n=2$ ), step-children ( $n=3$ ) or a mixture of both ( $n=1$ ). Of the four French fathers who were living with a new partner, only one had gone on to have further children. This particular respondent also had step-children from this new relationship.

It is of note, that in those instances where respondents were living with their new partner's biological children as step-father, all but one child (whose father had died) had regular contact with their own biological father. Indeed, the majority of these children were also in a shared residence arrangement (see Ch. 6 for a discussion of parallel commitments). Finally, it should be noted that three fathers within the British sample and one within the French sample had also been step-fathers to their ex-partner's children. Within this group, there was only one instance in which a respondent had managed to remain in contact with his step-child, and even this was on 'an occasional basis'. The theme of retaining contact with one's step-children after separation is taken up in a themed section in Chapter 7.

The geographical distance between households appeared to play a central role in facilitating this type of arrangement. In all but six cases, respondents lived within a five-mile radius of their children's mothers. Of these, eight British and five French fathers lived within a one-mile radius and was often described as being within 'walking distance'. Where parents did live outside a five-mile radius, they tended not to live more than one hour's drive away from each other.

While both the British and French sample groups place the average age of respondents at around 40-years-old (39 and 41 respectively), it is important to bear in mind that many were substantially younger when they first separated and began sharing the care of their children. Nevertheless, given that the majority of fathers had separated from their partners within five years of the research interview taking place, the samples show that fathers tended on the whole to be ‘older’ men even at the point of separation, with around two-thirds in each group falling into the 30–39 age category.

**Table 5.3 Children in shared residence**

	British sample (n=36)	French sample (n=24)
<i>Sex of child</i>		
<i>Girls</i>	11	12
<i>Boys</i>	25	12
<i>Age of child at interview</i>		
0–4	4	3
5–10	20	11
11–18	12	9
19+	0	1
<i>Age of child at separation</i>		
0–4	17	10
5–10	17	12
11–18	2	2

Table 5.3 highlights the characteristics of respondents’ children. While there were equal numbers of girls to boys in the French sample, there was more than double the number of boys to girls in the British sample. At the time of interview, the children ranged in age from four through to 22, with a mean age of nine in the British sample and 10 in the French sample. At the point of separation, these mean ages were reduced substantially to five- and six-years-old respectively. Shared residence had often been in place for some time, ranging from between two to 13 years. As such, many children would have been in a shared residence arrangement from a much earlier age. Indeed, with the exception of two children in the British sample and two in the French sample, all the other children had been under the age of 11 when they first began alternating their residence. Whether this indicates that shared residence is more easily established where younger children are involved is difficult to say given the small sample size. However, there is other evidence suggesting that where shared residence proves problematic for children themselves, this is more likely to be the case for older children than for

younger ones (Neale *et al.*, 2003; Smart, 2004), and so this proposition is to some extent reinforced.

**Table 5.4 Separation: status, reasons and initial family arrangements**

	British sample (n=20)	French sample (n=15)
<i>Marital status at separation</i>		
Married	13	4
Living together as married/cohabiting	7	11
<i>Who initiated separation</i>		
Mother	13	7
Father	4	0
Both	1	3
Not clear <sup>a</sup>	2	5
<i>Main reason given for relationship breakdown <sup>b</sup></i>		
Mutual decision to separate	1	3
Mother's adultery/left for another man	7	5
Father's adultery/left for another woman	2	0
Unable to continue living with partner	3	1
Mother left unexpectedly/to 'find herself'	1	3
Mother's instability/mental health /drugs/alcohol related problems	3	1
Father wanted a 'living apart together' relationship	1	0
Mother's post-natal depression	1	0
No reason given	1	2
<i>Stayed in family home</i>		
Mother	8	5
Father	9	3
Child	0	2
No one	3	1
Not known	–	4
<i>De facto residence at 3 months post separation</i>		
Mother residence	8	5
Father residence	5	0
Shared residence	7	10
<i>De facto residence at 6 months post separation</i>		
Mother residence	1	0
Father residence	3	0
Shared residence	16	15

Notes: <sup>a</sup> It was not always clear who had initiated the separation. For example, where one partner had been adulterous this did not necessarily mean that they wanted to separate from their spouse/partner. <sup>b</sup> This section only highlights the main reason given by fathers. A number of other issues may also have contributed to the breakdown of the relationship.

There was a striking contrast between the French and British samples in terms of fathers' marital status at separation. Table 5.4 shows that while around two-thirds of fathers in the British sample (13 out of 20) had been married to their children's mother, just over two-thirds of respondents in the French sample (11 out of 15) had been cohabiting. However, in itself cohabitation did not appear to have had any bearing on the length of relationships. If anything, cohabiting couples in the French sample appear to have had longer-term relationships than married couples, while in the British sample the reverse was true.

Although no fathers were sampled who had never lived with the mother, there were two instances of fathers who had not been living with the mother at the time of their child(ren)'s birth and had moved in together subsequently. Although these fathers were few in number, they nevertheless add a significant dimension to the analysis; Kiernan (2006), in her recent study of non-residential fatherhood and child involvement – based on the Millennium Cohort Study – tells us that 15 percent of British babies are now born to parents who are neither cohabiting nor married. To find instances of shared residence among this group could be significant, given the assumptions that are all too often made regarding these fathers' low levels of parental involvement.

The reasons fathers gave for the relationship breakdown were important since their perceptions of how the relationship had ended fed into the ways in which the post separation care of their children was negotiated and managed (see Ch. 7 for further discussion). In over a third of all cases within both sample groups, fathers cited their ex-wife/partner's infidelity as one, if not the only, cause of the relationship breakdown. While no fathers gave this as a specific reason for their ex-partners amenability towards accepting a shared residence arrangement, it is possible to speculate that mothers who had initiated the separation or, more specifically, had initiated the breakup for reasons of infidelity or having found someone else, were more likely or more willing to concede to such arrangements. For example, several fathers talked of how their ex-partners had later felt 'responsible' for the situation and had experienced a strong sense of guilt about the breakup of the family.

Table 5.4 shows that the numbers having adopted shared residence within the first three months ‘post separation’ tended to be high, numbering ten (two-thirds) of all cases within the French sample and seven (around one-third) of all cases within the British sample. With regard to other care arrangements prior to the start of shared residence, Table 5.4 outlines the *de facto* residence status of parents at two different points in time. At three months post separation there were no instances of *de facto* father residence in the French sample. By contrast, five fathers within the British sample had effectively taken on the role of primary carer during this time. This relatively high number may reflect the fact that a substantial proportion of fathers had stayed in the family home following the separation. Indeed, in the British sample nine fathers had remained in the family home in contrast to eight mothers. In the French sample, slightly more mothers than fathers had remained in the family home (5 to 3 respectively). In two instances it had been the children themselves who had remained in the family home (both within the French sample). In three other cases in the French sample and one within the British sample, the whole family had moved out of the family home and in four cases in the French sample I was unable to establish who, if anyone, had remained in the family home.

At six months post separation, there were three fathers and just one mother within the sample groups who were effectively ‘lone parents’ – all three cases occurring within the British sample. All other parents had by this time established shared residence, albeit in two instances parents were alternating their home life around the child’s one home.

It is important to bear in mind that while Table 5.4 highlights the *de facto* residence status of parents, their official residence status may have differed somewhat, given that such a status is often conferred on a parent through specific policy mechanisms, such as receipt of Child Benefit within the British context. In this sense, the *de facto* primary carer may nevertheless have been the officially non-resident parent. The circumstances of these fathers as well as a more in-depth discussion of caregiving immediately post-separation will be taken up in Chapter 6 (pp.146–8), with a series of examples given in the empirical chapters that follow. In particular, it will be important to establish the extent to which a sub-sample of ‘lone parent’ fathers can be identified, since this may have a bearing on the way the samples are conceptualised.

## **Analysis and interpretation**

Analysis is a continuous and iterative process involving data management as well as making sense of the evidence (Ritchie *et al.*, 2003). This section outlines the techniques used to manage, analyse and generate findings from the data, with the objective of being better able to evaluate the interpretations of the data that are reflected in the research findings. The analytical approach adopted within the thesis is largely a descriptive or interpretative one, since the general aim of the thesis has been in seeking to understand and report the views, culture and dilemmas faced by a particular group (e.g. Tesch, 1990). This does not mean that this approach is a-theoretical however, since theory building can traverse analytic approaches (Bryman and Burgess, 1994) and description invariably involves selection and interpretation of meaning according to implicit, informal theories-in-use (Hammersley and Atkinson, 1995; Mason, 2002; Williams, 1976).

The first point to note is that the interviews were conducted in two languages. Corden (2001: 289), explains how the '[c]ollection of appropriate data, and meaningful comparison and analysis between countries depends primarily on achieving equivalence in terms and concepts'. While one half of the interviews took place in Britain and were conducted in English, the other half were conducted in France in French. In order to make comparisons it was necessary to translate them. Eyraud (2001: 279), explains how language elicits a specific vision of the world, organising and preparing the experience of its speakers. To that end, 'translation is an operation using facts that are both linguistic and cultural', and since 'cultures represent not only different visions of the world but are also different actual worlds in themselves', a language therefore speaks of a particular social reality.

In the main, translating the French interview data into English did not prove problematic. However, as Révauger (2001: 261) explains, '[t]here is no such thing as canonical, linguistically correct, all-purpose translation', instead one always translates for a particular readership or audience. He goes on to explain that, 'Social policies, like legal systems, are steeped in national cultures' and therefore vulnerable to linguistic

interpretation. Indeed, Øyen (1990: 9) characterises the challenge of comparative research as:

Translating a concept from one cultural context to another cultural context, without distorting the content and meaning of the concept, and without losing valuable and characteristic information through the translation.

For example, the French term *sécurité sociale*, which refers to the institution created in order to provide mostly health insurance, could very easily be confused with the British concept of social security, while the term *quotient familial* refers to an administrative category that has no direct equivalent. Therefore, the need arose to leave certain terms in the original language, thereby signalling that those institutions are unique. In these cases and to avoid the possibility of misleading translations, where specific concepts were not easily transferable, I incorporated the term or concept in French in the first instance, with a proposed equivalent term in parenthesis, generally accompanied by an explanatory note. This, I felt, would act to draw the reader's attention to the specific meaning of the concept where this could potentially prove problematic and thereby deal with any conceptual and linguistic boundaries. With reference to the qualitative interview data more generally, the original French verbatim quotations do not appear alongside my own English language translation. If the study had been more focused on 'discourse' or 'conversation' analysis this would have been essential. Nevertheless, I felt that given the context of the thesis, the original French language would only be necessary to reproduce where certain concepts did not easily translate from one language or cultural context to another.

### **Data management**

The data were organised in accordance with the topic guide and the central themes that emerged from the interviews. These formed the basis for each empirical chapter, namely:

- (i) respondent characteristics and patterns of care;
- (ii) relational/familial aspects;
- (iii) the legal framework;
- (iv) the policy framework; and
- (v) other issues.



Charts, divided into French respondents and British respondents, were drawn up manually on A3 sheets of grid paper where each respondent was allocated a row and each column represented a different subtopic. The five main substantive headings were then subdivided into related topics. For example, within theme ii) the 'relational/familial aspects' grid or 'matrix' subtopics included: ii (a) the parental relationship; ii (b) the role and influence of the children; and ii (c) wider family support and recomposition. These subtopics were then broken down still further as new and separate themes emerged or where data were considered relevant to more than one *central* theme. As well as the fifth substantive heading 'other', which often included emergent theoretical aspects, each subset also included an 'other' category in order to code any additional issues that arose. These issues could then be added to an already existing category as they evolved or formed the basis of a new category of analysis.

The use of Nvivo – a computer-assisted method of qualitative data analysis (CAQDAS) – had been considered in the early stages of the research. One of the main benefits of which resides in the speed with which such software can offer in handling large amounts of contextual data. However, given the relatively small number of interviews, and the dangers inherent in tagging and retrieving segments of text somewhat removed from their context (Coffey and Atkinson, 1996), it was felt that more manual data manipulation analysis methods would be a more beneficial approach to this study while not ruling out such techniques for future research.

To begin with, the interviews were listened to in their entirety and central ideas and quotes were highlighted in the grids under theme headings with cassette transcription numbers added for easy reference and access to the appropriate point on the tape. The interviews were then transcribed in full, in order to become familiar with the raw data and not to dismiss any data as irrelevant at too early a stage in the analysis. These transcripts were also colour coded in the margin or underlined as appropriate. Using the grid matrix in conjunction with the physical transcript sheets allowed me to cross-reference and check the data accordingly. This was particularly important, given that 15 of the interviews had been translated into English from the original French transcripts. In effect, three levels of data management were in play, serving different though complementary functions: the grid matrices, the transcripts and the audio-tapes

themselves, each allowing me to back-track to the source and check the original material where appropriate, for example, where initial interpretations needed to be revised or where a particular French policy concept had not been fully appreciated. Perhaps most importantly, these three aspects allowed me to immerse myself in the raw data and thereby provided a ‘conceptual scaffolding’ (Ritchie *et al.*, 2003) with which to construct the analysis.

This ‘grid’ analysis’ or thematic ‘framework’ analysis (Ritchie and Spenser, 1994) allowed me to organise the data according to key themes, concepts and emergent categories. These were then refined as I became more familiar with the raw data and cross-sectional labelling. Finally, the data from each case was synthesised within the appropriate part of the thematic framework. As well as central verbatim quotations from the transcripts and references to further quotations, references to the observational (field) notes I had taken were also included in the grid matrix having been selected for their relevance. As well as using short textual terms to capture the essence of a particular theme or issue, these were in turn colour coded, making it easier to move from transcript to grid and vice versa.

Corden and Sainsbury (2006), suggest that the process by which spoken words are selected and blended with narrative text will very often depend on the underlying reasons for using the quotations. In my case, the conceptual and theoretical bases for selecting fathers’ direct quotations stemmed from the desire to clarify the linkages between the data and my interpretation and conclusions. Not only were excerpts from the transcripts chosen in order to illuminate the links that fathers themselves made between their experiences and beliefs, and the sense they made of their circumstances and what happened in their lives, but additionally to act as a check on the interpretation of the data itself.

## **Implications of the methodology for the research findings**

This final section of the chapter reflects upon the possible implications of the methodology for the research findings. First, in setting out a specific sampling criterion,

certain exclusions have been made to the range of possible experiences fathers may be party to where children are living with each parent separately; for example, with regard to long-term periods of residence. In addition, being unable to 'self-define' has limited the possibilities of exploring fathers' own definitions of shared residence. However, opening the study up to such wide variation in experience would arguably have led to a less focused exploration of the ways in which fathers' experience articulates with both the legal and policy frameworks of each respective nation at the intersection of resident and non-resident parenting.

Secondly, despite the creation of an artificial boundary within which shared residence is deemed to take place, there are clearly instances in which families move in and out of this 30–70 ambit of residence. For example, from the time of separation several parents acted as primary carers before a shared residence arrangement came about and by the time of interview two children had gone to live with one of their parents on a full-time basis. This highlights the dynamic nature of post separation care arrangements over time and the difficulty of imposing a residence criterion on the sample. Nevertheless, as will be reflected in the fathers' accounts over the chapters that follow, despite the dynamic nature of arrangements, that have often been born out of a process of trial and error, it is nevertheless possible to discern a shared model of residence that appears to remain constant for the majority of respondents over time.

The use of a snowball sampling technique by which to access respondents also opens up the possibility that a less typical sample of fathers with shared residence has been brought to the study, given that the use of networks may produce samples with similar social characteristics. However, as shown in Fig. 5.1 (p.106), the reality of the snowball process in the current study meant that some distance was often put between respondents. Although the average age of respondents was around 40 at interview there were nevertheless both younger and older respondents, all of whom were able to highlight different routes into shared residence. While many had not repartnered, there was still a substantial proportion of fathers who were in new relationships with and without new children and/or step-children. In addition, respondents were accessed from a wide range of locations within both Britain and France and a variety of patterns of residence were apparent across the two sample groups.

Despite the limitations that have been highlighted above, the sample groups nevertheless appear to be varied and to have brought a range of different experiences to the research. The rich and diverse accounts of respondents, who also span a range of social, educational and class backgrounds, therefore opens up greater possibilities for understanding change. They can tell us not only a great deal about their own experiences at this intersection but about the phenomenon of shared residence more generally.

## **Summary**

This chapter has provided an explanation and exploration of the methodological strategy employed within the empirical work. It has also provided a summary of the respondent characteristics, which should act to signpost the reader to the types of issues that will be explored through the fathers' narratives in the chapters that follow. A reflexive and transparent account of the procedures and rationales involved in generating and analysing the qualitative data has been of particular importance given that no 'standard procedure' exists by which to determine the validity of the qualitative findings (e.g. Skinner, 1999: 129). These findings are now presented in the following four chapters. I begin by outlining the variety of care patterns that parents had adopted.

## **Chapter 6**

### **How shared residence manifests itself**

#### **Introduction**

Despite widespread interest in the notion of shared residence, relatively little is known about how this type of arrangement works in practice, in particular the variety of parenting schedules parents adopt. In part, this is due to the difficulties inherent in establishing any precise boundaries over what constitutes ‘shared residence’. Drawing on the interview data, this chapter outlines and discusses the manifold arrangements that have been made under a ‘shared residence’ banner; where, within the working definition employed in this research, children spend upwards of 30 percent of their time over the year resident with each parent.

Since the qualitative nature of the study aims primarily to illuminate rather than measure the diverse manifestations of shared residence, a selection of respondent narratives are used to highlight the myriad arrangements participants describe and the contexts within which they take place: whether, for example, they have been adopted from the outset or whether they have developed over time; whether they run in parallel with residence arrangements for other children; how discernible patterns might vary over holiday periods or for family gatherings; the extent of non-overnight caring; and whether or not respondents see current arrangements changing, perhaps as their children get older. Patterns of care can be messy and complicated and the logistics involved in negotiating and managing such arrangements are precisely what I set out to explore within the thesis.

Although the fathers’ characteristics have been set out in Chapter 5, their profiles are also woven more deeply into discussions of the actual patterns of care and residence that they are engaged in. In this way, they signpost the reader to some of the underlying motivations, reasons and choices that participants give for their particular approaches that will be followed up in subsequent chapters.

## Parenting schedules and patterns of care

The analysis revealed various patterns of care that could be considered to constitute shared residence. In the main, these centred around a one- or two-week cycle of residence that tended to be broken over holiday periods and according to the degree of flexibility parents demonstrated towards each other and towards their children's own wishes and needs. In order to summarise these, I have developed a schematic representation over time in which each shaded block highlights the number of overnight stays the children make in each respective household, where **M** = with mother and **F** = with father. In addition, each week is shown diagrammatically as starting from Sunday.

### *The one-week cycle*

Chris (Fig. 6.1) provides us with an example of a one-week cycle of residence, where his two sons are with him from Wednesday until Saturday evening, and then spend Saturday evening until Wednesday morning with their mother.

**Figure 6.1** British respondent: Chris (age 36) and Sue – Joel (age 7) and Sam (age 4).

<b>M</b>	<b>M</b>	<b>M</b>	<b>F</b>	<b>F</b>	<b>F</b>	<b>M</b>
Sun	Mon	Tue	Wed	Thurs	Fri	Sat

### *The two-week cycle*

Jacques (Fig. 6.2) gives us an example of a two-week cycle of residence, where his children spend from every Friday evening until the following Friday evening resident with one parent.

**Figure 6.2** French respondent: Jacques (age 44) and Mari-Lou – Julian (age 12) and Sophie (age 9).

Week 1							Week 2						
<b>M</b>	<b>M</b>	<b>M</b>	<b>M</b>	<b>M</b>	<b>F</b>	<b>F</b>	<b>F</b>	<b>F</b>	<b>F</b>	<b>F</b>	<b>F</b>	<b>M</b>	<b>M</b>
Sun	Mon	Tue	Wed	Thur	Fri	Sat	Sun	Mon	Tue	Wed	Thur	Fri	Sat

This particular approach – often referred to as a ‘week-about’ arrangement or *résidence hebdomadaire* in France – was practised by over a third of French respondents, making it by far the most common pattern among the French sample. Other approaches in the French group included a four-week cycle, where children would alternate between both homes every two weeks (known in France as *la quinzaine*), and a model of care commonly referred to in the UK as ‘nesting’, where it is the parents who alternate their own residence to accommodate the child’s one home. Where this occurred, it tended to take place in the initial stages following the breakdown of the parental relationship; in one instance, this model of care took place over a period of six months, in another for just over a year.

Unsurprisingly, fathers revealed a great diversity within these ‘cycles’ in the actual day-to-day division of care; even where residence was practised on an equal or next to equal-time basis. Even the most common patterns in the French and British samples, namely ‘week-about’ and ‘split-week’ arrangements respectively, exhibited great differences, not only in the days on which the changeovers occurred but also in their timing and logistics. Many arrangements, for example, would also include extra daytime contact.

### **Non-overnight contact**

Defining residence by the number of overnight stays alone to some extent masks the complexity within which overall contact takes place. Non-staying contact can be a significant factor in the negotiation of residence and the development of patterns of care. It proved to be of particular significance within the samples where younger children were at nursery or where children needed care during the day while the resident parent at the time was out at work. This was also the case where parents would pick their children up from school and spend the evening together, or where parents had adapted their working hours specifically in order to spend more time with them. Since the parenting schedule Figures 6.1 and 6.2 inform us only of the number of overnight stays, the following examples give us some insight into the manner in which extra-care is provided by parents and the reasoning behind such decisions.

Chris (Fig. 6.1), for example, in addition to his Wednesday to Saturday period of residence, also spends Monday evenings with his two sons at their mother’s house, ‘babysitting’ and then putting them to bed. He and his ex-wife agreed this in order that

there would not be a floating day each week and that the days would therefore stick to a set pattern.

We tried to do it in such a way that it didn't change during the week, because obviously there's an odd number of days in the week. So this way, it's the same [pattern] every week. [...] It was always a shared residence arrangement, but before the days juggled about all over the place ... generally around what Sue wanted, but she likes the fact that I go round there Monday night, because otherwise I wouldn't see them Sunday, Monday or Tuesday.

Both Chris and Sue also see the children at other times. Their mother will, for example, 'pop in' on occasions to say goodnight to the boys. Chris explained that they will both see the children on most days and that they will invariably be in each others homes, if only for five minutes.

Those fathers whose arrangements turned on a one-week cycle often had a split-week arrangement (i.e. where the week is split into two parts, whether on a 5:2 ratio or one of 4:3). They also tended to revolve around weekend residence.

**Figure 6.3** British respondent: Burt (aged 51) and Liz – Mandy (aged 10) and Claire (aged 8).

M	M	M	M	M	F	F
Sun	Mon	Tue	Wed	Thurs	Fri	Sat

Burt (Fig. 6.3), for example, who, when taking account of holiday time spent resident with his children, stands at the margins of the study's definition of shared residence, has an every weekend arrangement. He and his ex-partner Liz separated five years ago and apart from a short spell when they 'fell out', his two daughters have spent every weekend with him since they split up. Burt also sees his daughters during the week, having them over to tea after school every Wednesday. Like Chris, he explained that having an arrangement that is regular and consistent means that the children always know what is happening.



### Motivations for particular patterns of care

The diversity and logistics involved in arrangements were very often driven by reasoned considerations. Simon (Fig. 6.4), for example, provides us with a good example of how the day on which the children alternate their residence can be of great significance. Simon and his ex-wife, Ros, had been operating a ‘week-on–week-off’ pattern of residence with their children for nearly five years, each parent respectively picking the children up after school on a Friday and then dropping them off at school the following Friday morning.

**Figure 6.4** British respondent: Simon (age 49) and Ros – Beth (age 10) and Harry (age 9).

Week 1							Week 2						
M	M	M	M	M	F	F	F	F	F	F	F	M	M
Sun	Mon	Tue	Wed	Thur	Fri	Sat	Sun	Mon	Tue	Wed	Thur	Fri	Sat

Simon explained how he and Ros initially worked a Monday to Monday turnaround. However, Simon found that the children were coming home exhausted and this was affecting their school week:

We did try it Monday to Monday, but Ros used to let them stay up very late watching movies on weekends, and then I’d pick them up on the Monday and they’d be absolutely knackered. And then I would also get complaints off her that when [she and her new partner] got the children on the [following] Monday, they were absolutely wiped out because I’d been doing something with them; we’d been away camping or something at the weekend. So I said, ‘well that’s fair enough, what we’ll do from now on is do it Friday to Friday, so that if somebody does something it’s their responsibility’. I swapped it round. If you have a full-on weekend doing something, it’s your responsibility to sort them out for that week.

Simon, who described his arrangement with Ros as indicative of *parallel* rather than *cooperative* parenting (for a further discussion of parenting approaches see Ch. 7), also explained that operating a weekly turnaround, where one parent drops the children off in the morning and the other picks them up after school, meant that he and Ros were also able to ‘avoid as much contact as possible’. The extent to which patterns of care were

influenced by the motivations of respondent's children is not dealt with here but is discussed in the following chapter, which explores the role and influence of the children themselves together with questions of autonomy.

### The length of residence

The most striking difference between the two sample groups was the length of time that parents were willing to agree to being apart from their children. A British respondent, Richard, echoed the sentiments of many fathers within both samples regarding the need for a comprehensible rhythm that both children and parents could keep track of:

There's a minimum stay and there's a maximum stay. I think a pattern that left children moving from one night here and one night there on the odd fortnight would just ... no one could keep track of that and confuse them. There needs to be a comprehensible rhythm [...] and that usually means that you're dealing with more than a single day unit. On the other hand, I don't think that more than four or five nights without seeing your mum or your dad is good.

However, while for Richard and many fathers in the British sample this rhythm would generally be reflected in shorter three- or four-day blocks as a maximum period, for many in the French sample, three- or four-day blocks tended to be the point at which children would start to alternate their residence. There were, for example, no instances of alternate day approaches within the French sample, despite this being a fairly common occurrence among British respondents, particularly in the initial stages following parental separation.

Kyle (Fig. 6.5), for example, outlined the current arrangement he and his ex-wife have for their eight-year-old son. It can essentially be described as an 'alternate days' approach. Apart from the two blocks of two nights that take place in week 1, the rest of the time including weekends is characterised by a daily change of residence.

**Figure 6.5** British respondent: Kyle (age 35) and Freya – Roly (age 8).

Week 1							Week 2						
F	M	F	F	M	M	F	M	F	M	F	M	F	M
Sun	Mon	Tue	Wed	Thur	Fri	Sat	Sun	Mon	Tue	Wed	Thur	Fri	Sat

Despite the apparent complexity of this arrangement, Kyle described it as being well understood and as having worked well for several years:

The format we both understand! We don't have to talk to each other about the two-week cycle. We both have been doing it for so long that we don't have to ask any questions there. [...] [It] has worked for quite a few years now and has worked successfully. Roly seems very happy and well adjusted to both environments and he sees both places as his home now, which is good I think. Roly seems really, really happy in all ways.

Anthony (Fig. 6.6) and his ex-partner's arrangement for their son Jack, in the early stages of separation, offers another example of a next-to-daily change of residence.

**Figure 6.6** British respondent: Anthony (age 34) and Irene – Jack (age 13).

Week 1							Week 2						
M	F	M	F	M	F	F	F	M	F	M	F	M	M
Sun	Mon	Tue	Wed	Thur	Fri	Sat	Sun	Mon	Tue	Wed	Thur	Fri	Sat

Here, a daily change of residence was in operation with alternate weekend blocks, from Friday afternoon until Monday morning. This meant that in week 1, Anthony would have Jack on the Monday, Wednesday and Friday of week 1 and that Irene would have Jack for the Tuesday and Thursday. This pattern would then be reversed the following week so that Irene would have Jack on Monday, Wednesday and Friday. This pattern changed after about one year to the following arrangement, extending each weekend block by one extra day and night.

**Figure 6.7** Anthony's second and current arrangement.

Week 1							Week 2						
M	F	M	F	M	F	F	F	F	M	F	M	M	M
Sun	Mon	Tue	Wed	Thur	Fri	Sat	Sun	Mon	Tue	Wed	Thur	Fri	Sat

Although this pattern could equally be described as ‘alternate days and every other weekend’, the changes Anthony and Irene introduced have enabled them to be sure which days in the week Jack would be with them, despite the alternating weekends. As Anthony explained:

We did change after that. We changed it to every-other-weekend and Tuesdays and Thursdays, because it did get a bit complicated. So we knew [what was happening] in the week ... we’d have four days, because where it used to rotate in the weeks, sometimes you couldn’t remember which day, if you know what I mean? It got a bit complicated, so we agreed to stick to certain days in the week, and then if it’s your weekend, it’s your weekend! And that worked better, because everybody knew where they were all the time, and you could write on the calendar a month or so in advance what you were doing on [...]. But when we was doing it alternate days in the week it took forever to figure out if Jack was going to be here on that day or not.

More generally, while the British sample tended to adopt shorter blocks of time before alternating the children’s residence, the French fathers tended to see longer blocks as being less disruptive, as providing more stability and consequently as being less harmful for the children overall.

### **Changing patterns of care over time**

It has become evident from the above discussion, that it is difficult to outline current parenting arrangements in isolation. Doing so would only result in masking the complexity with which arrangements are arrived at and are continually evolving. Indeed, the current arrangements themselves may not be static ones. They are more often than not fluid, perhaps involving several different formulations over time.

If we take the case of Jean-Pierre (Fig. 6.8), we can see the complexity with which arrangements are arrived at and evolve. Jean-Pierre and H  l  ne, his ex-partner of 15 years, had initially adopted an alternate-weeks arrangement when they separated, in which their children, at that time aged 14 and nine, alternated their residence between households every Sunday evening.

**Figure 6.8** French respondent: Jean-Pierre (age 56) and H  l  ne – Pascal (age 22) and Jules (age 17). First arrangement lasted for nine months.

Week 1							Week 2						
F	F	F	F	F	F	F	M	M	M	M	M	M	M
Sun	Mon	Tue	Wed	Thur	Fri	Sat	Sun	Mon	Tue	Wed	Thur	Fri	Sat

This mutual arrangement, that had been worked out between themselves, appeared to work smoothly for a period of eight to nine months until an altercation over the exact day on which the swap-over should take place – Jean-Pierre wished to switch the Sunday evening changeover to the Monday evening – led to acrimony, an increased tension, and finally ended up in the *tribunal* (the court hearing family cases), with H  l  ne seeking ‘sole-custody’ of the children.

Although the judge refused to specifically grant shared residence, he was nevertheless unwilling to delimit the amount of time spent by the children with each parent. The arrangement that followed meant that the children were spending a total of six nights with their father in contrast to the seven nights in the previous arrangement. The major difference being that the week was now split up into three smaller blocks of two days and nights for Jean-Pierre and that H  l  ne was now officially the ‘resident’ parent, with blocks of one, two and five nights.

**Figure 6.9** Jean-Pierre’s second arrangement lasted a further 18 months.

Week 1							Week 2						
M	M	F	F	M	F	F	M	M	F	F	M	M	M
Sun	Mon	Tue	Wed	Thur	Fri	Sat	Sun	Mon	Tue	Wed	Thur	Fri	Sat

This new arrangement lasted for approximately one year-and-a-half, after which time Jean-Pierre’s son, now aged 11, began to express his frustration with all the toing and froing involved in this arrangement and asked his mother if he could resume the weekly residence arrangement that had been in place previously.

What happened was that my son had gone to see his mother saying, ‘I don’t want to do this anymore!’ Because, for example, the weeks where I would have the children

the weekend, I'd pick them up on a Tuesday evening, they'd go to school on Thursday morning, be back at their mum's on Thursday evening, back with me on the Friday evening and then on Sunday go back to their mother's. Understandably, my son told me afterwards: 'It was awful!' It was awful because it never stopped. The coming and going without stopping. Then there was all the belongings. ... As it was my son who'd asked to change it, [their mother] didn't contest it and said 'well, ok then' and my son resumed the former shared residence arrangement. The only difference being the changeover day, which was now every Friday.

Jean-Pierre's daughter, on the other hand, preferred to stick with arrangements as they were. Jean-Pierre described her decision not to resume the old pattern of residence as being out of loyalty to her mother. In any event, he and H  l  ne ended up having two shared residence arrangements operating in tandem; one for their son and one for their daughter (Figs 6.10a and b).

**Figure 6.10** Jean-Pierre's third arrangement.

**a)** With Jean-Pierre's son the arrangement reverted back to alternate weeks (from Friday evenings).

M	M	M	M	M	F	F	F	F	F	F	F	M	M
Sun	Mon	Tue	Wed	Thur	Fri	Sat	Sun	Mon	Tue	Wed	Thur	Fri	Sat

**b)** The previous (second) arrangement with Jean-Pierre's daughter continued for a further 18 months.

M	M	F	F	M	F	F	M	M	F	F	M	M	M
Sun	Mon	Tue	Wed	Thur	Fri	Sat	Sun	Mon	Tue	Wed	Thur	Fri	Sat

Jean-Pierre explained that because it was his son who had asked to revert to an alternate-weeks arrangement, his mother did not contest it. For the judge, the fact that it was the wish of the child to resume the previous shared residence arrangement, in some ways attests to the voice of the child being respected both at home by the parents and in court by the judge.

In relation to the evolution of arrangements, it is important to reflect that, more generally within the samples, while the patterns of care themselves may have changed, often several times, the relationships and actual care-time across both households tended to remain constant in both the British and French samples. Exceptions to this rule were

where one parent had initially taken on the sole residence of the child(ren) following the parental separation and contact with the other parent had been minimal. Other exceptions included two children, who, following a lengthy period of shared residence, had gone to live with one of their parents on a ‘permanent’ basis. The first, Jean-Pierre’s daughter Pascal, at the age of 17, having alternated her residence for around four years; the second, Benoit’s daughter Emily, now aged 18, who had been in a shared residence arrangement since the age of five – initially ‘nesting’. Benoit described how this transition came about. He explained that, from the start, there was never any doubt that he and his ex-partner Brigitte would share the care of Emily. The nature of the arrangement changed after the first year when Emily, rather than her parents, began to alternate her residence. However, the actual pattern of care, including the actual days on which residence took place, remained the same from the time of separation when Emily was aged five until she was 16: Mondays and Tuesdays with Benoit, Wednesdays and Thursdays with Brigitte, with alternate weekends from Friday to Sunday.

**Figure 6.11** French respondent: Benoit (age 41) and Brigitte. This pattern of care began when Emily was aged 5 and continued until she was aged 16.

Week 1							Week 2						
M	F	F	M	M	F	F	F	F	F	M	M	M	M
Sun	Mon	Tue	Wed	Thur	Fri	Sat	Sun	Mon	Tue	Wed	Thur	Fri	Sat

The last two years, from age 16, Emily had an alternate-weeks arrangement until she finally decided to move in with her father, full-time, only a matter of weeks before the interview took place. Benoit explained that Emily had wanted to do this much earlier:

She wanted to move in with me before, but it was difficult. So we had this one-week/one-week arrangement. She was always closer to me, you know, a father–daughter relationship, you know? And her mum was always a bit stressed out.

Benoit appeared to have been proactive in keeping the shared residence arrangement going over the last two years, despite Emily’s wish to move in with her father. He felt that since the arrangement was largely working it would be in Emily’s interests not to let

her make the break from her mother too soon. Now she was 18 he no longer felt he could stop her but recognised how difficult this was going to be for her mother, Brigitte.

Emily had become fed up with it and wanted to settle in one place. She was fed up of always moving, together with her belongings and all that. Now she was 18 and having had it in mind for several years ... at that point she really felt like being in one place – landing! ... I think that with her mother, she would get angry just a little too often and so I think Emily also needed to grow and move away from all that. I think that she was feeling the pressure a little in relation to her mother, perhaps she felt less with me. It's a little easier anyway because it's a father–daughter relationship and perhaps I don't get on her back so much, I give her more space.

Neale *et al.* (2003: 905), in their study of childrens' experiences of 'co-parenting' tell us that while an equal sharing arrangement was often described as ideal, as children got older shared residence could become problematic 'for the lives of some children and young people'. The above examples also appear to suggest that while the younger child might adapt unquestioningly to alternating their home life, the more mature child may at some stage feel the need to settle in one place and may have formed preferences. This may require a certain amount of unselfish understanding from parents. However, whatever the nature of a child's preferences might be as they get older, it is important to recognise that these preferences are constructed within the context of a broader family life.

### **Recomposed families and parallel commitments**

What stood out most across both samples was the complexity of peoples' lives. While Jean-Pierre and Hélène had two shared residence arrangements operating in tandem for their two children, others had two or even three sets of family commitments running in parallel. As David explained, this could make for very complicated arrangements:

We're a set of two families that have come together – myself and Sarah – and between us we have six children; three each. So [...] I have mine on a Wednesday, Thursday, Friday and every other Saturday allegedly, but ... we're quite flexible with that, and sometimes we have two and she'll keep one if she's got something on at her end. So they swap and change [...] And then Sarah, unfortunately, it's slightly more difficult because her ex- works a rolling rota, so it's four-on–four-off.



So basically he has the children two days every eight. So that day goes back one day every week, so it'll be on a Monday, Tuesday, one week, a Tuesday, Wednesday the next week, which really complicates things.

The complicated nature of peoples' lives was commented on by several fathers. One French respondent, Christophe, believed that clear-cut patterns of care, such as alternate week arrangements, are becoming increasingly untenable as they very much depend on complexities in other areas of life. He cited the necessity to construct arrangements around actors other than immediate family, as well as work, as the main reasons for this. While he conceded that the children's residence could still be shared in an equal way he pointed out that in his particular circumstances, not only must his own arrangements suit his own working life as well as his ex-partner's but that the arrangements of his girlfriend, her son and her ex-husband must also be taken into account.

The complexity of having to manage several different arrangements, taking on board the needs and wishes of all the various social actors and relationship dynamics involved, meant that a certain amount of leeway and flexibility in arrangements was imperative. Again, this flexibility serves to highlight the often-fluid nature of arrangements.

### **Flexibility in arrangements and future changes**

Patrick (Fig. 6.12), one of the French participants, lives within walking distance from his ex-wife and picks his two sons up every Friday evening after work at 6 p.m. The children spend the weekend (Friday, Saturday and Sunday night) with him, after which he drops them off at school on Monday morning. Patrick and his former wife, Emma, divorced three years ago and these arrangements have been in place since they separated. In addition, the children spend one weekend in every four or five with their mother and half the holidays with each parent.

**Figure 6.12** French respondent: Patrick (age 42) and Emma – Peter (age 10) and Eric (age 7).

<b>F</b>	<b>M</b>	<b>M</b>	<b>M</b>	<b>M</b>	<b>F</b>	<b>F</b>
Sun	Mon	Tue	Wed	Thurs	Fri	Sat

Patrick explained that now his eldest son Peter would be starting *collège* (state secondary school for ages 11–15), the timetable was likely to become a little more flexible. As Peter would have no school on Wednesday mornings (see Ch. 9, it is quite common for children not to have school lessons on a Wednesday), Patrick expected that he was likely to start spending Tuesday evenings with him.

What's happening now, is that Peter is older, 10-years-old, and he'll be starting [secondary school] at 11. So the eldest I'll be seeing a little more often; Tuesday evenings, because Wednesday morning there's no school. So the timetable is quite supple, more flexible and since I live just over the road, not very far at all, the children will move around a lot more. So there'll be less of a restrictive timetable. It's a bit more about where they feel they want to be. It's more about what they feel.

Many fathers, particularly within the British sample (whose arrangements were generally of a shorter duration) conceded that arrangements were likely to change as their children got older. When asked if he could see arrangements changing in the future as his son got older, Kyle (see Fig. 6.5) expressed a certain fear of change yet felt it would be inevitable as his son grew up and became more independent:

The future, you know, eventually, the things that I think about is when he starts, bigger school ... and I sometimes think to myself, we might have to slightly change this to longer blocks. ... [But] I think Roly'll make his own mind up. I don't know if you can change that in a child really, you know, if they want to be somewhere.

**Q: Do you envisage things changing then, as he goes into secondary school?**

I really worry about it! I'd hate the day that he might say, 'oh, it's shorter to walk home to mum's house'. I really think about [when he goes to big school]. Isn't that stupid? If his mum lives closer I'll think, well, I'm over the other side of [town]. It might be closer and more convenient; is that going to be a swaying factor?

There was a clear sense among respondents that arrangements were not set in stone and could evolve as their children's needs and interests changed, but in general a set pattern allowed all parties to know what was happening on a day-to-day basis and that this

consistency gave them all a sense of security within which to experience family life. Finally, it is important to return to the issue of patterns of care prior to shared residence, since this may have a bearing on the way the sample groups are conceptualised.

### **Care arrangement prior to shared residence and *de facto* lone fathers**

While, in some instances, the breakdown of a parental relationship may occur very quickly over a short space of time, in others it may be drawn out over a period of months or even years. This can make the actual point at which a couple ‘separates’ hard to determine, particularly in those instances where parents continue to live under the same roof and move in and out of the family home after a decision to separate has been made. In this context, it can be difficult to decipher, at such an early stage, whether parents have established any defined roles with regard to care giving. While the way parents function after separation may be intimately related to the way they functioned during the partnership (Cardia-Vonèche and Bastard, 2007), where both parents have played a central role in the care and upbringing of their children, the difficulties in establishing defined care roles may be compounded still further. Given these uncertainties and in the interests of clarity, determining care arrangements prior to shared residence takes place at two points in time: at three months following what fathers describe as the point of separation and at six months. Even where one parent had stayed in the family home, this did not always guarantee that they would also continue to have the children living with them for any length of time. Therefore, these two periods of time allow for more clarity in determining with whom the child was resident prior to shared residence.

It should also be made clear, that in line with the discussion on respondent characteristics in Chapter 5, these two periods of time are considered in relation to the *de facto* residence of the child(ren) rather than any official ‘residence’ designation (see Table 5.4, p.123). Given the anomaly that may exist between *de facto* care giving and an official residence status, generally conferred on a parent through certain welfare mechanisms (see Chs 4 and 9 for further discussion), it is important to make this distinction.

In this context and within the given post separation time frames, it was possible to discern five instances in which fathers had taken on the primary care of their children

prior to the start of shared residence. All five cases occurred within the British sample and in all five cases the fathers had remained in the family home. In two instances, fathers had taken on the primary care giving role for periods of between three and six months from the point at which the mothers left the family home. In the other three instances, fathers had become the resident parent over much longer periods of time. Hal, for example, became the sole carer for his son Gavin, now aged 13, for a period of around six years before a shared residence arrangement was adopted with his ex-partner. For Kyle and Thomas, a period of approximately two years had elapsed before shared residence had been established.

Up to this point, the samples of fathers have been viewed as somewhat homogenous in their attributes given they all share the residence of their children. It is important, therefore, to establish whether this particular group of *de facto* 'lone fathers' share any common characteristics other than a period of solo parenting prior to establishing a shared residence arrangement with their children's mothers, since this may have a bearing on the way the sample is conceptualised. It is notable, for example, that in two instances, the fathers claimed that the mothers had been largely incapable of looking after their children, given drug and alcohol related problems. This, they claimed, had led to the mothers being particularly unreliable and in one instance had led to a long-term period of 'hospitalisation' for treatment.

Hal's case is notable not only for the length of time he was sole carer for his son but also in relation to his status as a lone parent since, being unmarried, he had never held parental responsibility for his son (see Ch. 8, for further discussion of parental responsibility). This was also the case for another respondent within this group-of-five. In both cases, these fathers were in receipt of Child Benefit, the children were registered at their address and they were making many of the day-to-day decisions around education and healthcare more usually associated with having parental responsibility. Indeed, of the five fathers, only one respondent had not been in receipt of Child Benefit at some point post separation. In the other three cases, two mothers had moved in with new partners and one had left the area, moving in with a new partner at a later date.

However, whether these fathers can be seen as a sub-sample in terms other than sharing a *de facto* period of solo parenting is questionable, given that this group of respondents

shared many of these characteristics with other fathers within the two sample groups. It is notable that other fathers, who had not had a period of solo parenting prior to shared residence, had also stayed in the family home, were also in receipt of Child Benefit and also had concerns over the care provided by the mothers. Nevertheless, all five fathers highlight points of interest sometimes related to their period of solo parenting and sometimes not and are therefore followed up in Chapters 7–9.

## **Holiday periods and family occasions**

Up to this point, we have looked at patterns of residence and care over term time and a typical school week. What patterns, if any, did respondents follow during holiday periods and festive or religious occasions such as birthdays, Christmas, New Year and other family gatherings and events such as weddings or funerals? For the majority of respondents patterns of care were, more often than not, broken over holiday periods. However, these periods could equally take on their own repeated ‘cycles’ of care, for example, where holiday periods were split equally into two parts or where children would alternate Christmas and New Year with each parent each year.

### **Holidays**

For the most part, respondents in both samples tended to share holiday times with their children in equal measure; half with their father and half with their mother. These holiday periods could also provide an opportunity to spend more ‘quality time’ with other relatives, a proportion of which might be spent at the homes of relatives without either parent being present. One French respondent, Stephan, described how, given the long eight-week summer holidays, his two children (aged 5 and 3) will spend two weeks with him, two weeks with their mother, two weeks with their grandfather (Stephan’s own father) and another two weeks with their maternal grandmother.

It was unusual for holiday periods to be spent all together by children and both separated parents. However, as Hal reveals, this did occasionally happen:

We have taken holidays together as well; we've gone to music festivals and things together. Got a big enough tent! We've got different bedrooms in it and everybody's happy. But yer, yer, we attend things together.

For one British respondent, Jim, these family 'reunions' could often lead to a certain apprehension:

We'd get back together and do family holidays as well. And then I'd just find it too confusing. I think it was too conflicting, you know, one minute mum and dad are all together and then they're not. For the children I think it was a bit mind-blowing. For me as well and for my wife, you know, and it was all a bit false, you know? And you don't want to offer false hope to the kids either. It's too conflicting! It's too confusing! We did that for the first, sort of, year I would say. [...] And you could feel it was strained, you know, because ... when the children were with me I was the 100 percent parent and I was doing everything and when the children were with her she was doing everything, so initially when we got back together there was no defined roles of who did what really. I tended to do it my way and she was tended to do it her way.

There were some parents who rarely deviated from the set pattern, even over the holiday periods. In these instances, children were generally younger. Martin, for example, described how arrangements would vary only slightly, perhaps by an extra day and night for his 7-year-old son.

During the holidays, we keep it on a similar format, and [my son] will often say he wants to come and see me on a Monday or another day if [his mother's] working.

Kyle also explained how arrangements are kept to a similar format over holiday periods:

What we usually do, yer, we'll usually stick to this same format, and maybe the last two weeks [of the Summer holidays] we'll do a block of a week each. So, if one of us wants to go away then that's fine, we have a block, a time. But I try to keep to the same format. Again I, I think sometimes routine is quite a good thing.

Finally, holiday periods could be an important factor in equalising the amount of staying contact children might have with each parent. While one parent might have the

majority of care and residence during the school term time, the other parent could take on the primary care-giving role over holiday periods. For example, where respondents with weekend contact also had their children for the majority, if not all, of any short-term breaks such as half-terms or the Easter break, this could often equate to nearly half of all time spent in each household. In addition, when taking account of actual contact time during term time, when children are at school and parents are mainly at work, it may be that residence does not equate into a majority of overall contact time.

### **Festive occasions and family gatherings**

Seasonal and festive periods could present their own unique challenges for all concerned. Christmas and New Year for some fathers seemed a particularly difficult period to get right at first. Often, satisfactory arrangements were only reached through a process of trial and error, as Kyle highlights as he described how his eight-year-old son, Roly, would make the transition across households over Christmas:

Basically I think it was too much for Roly to be swapped over at midday. I think midday cross-overs are not good! You know, they get up in the morning, especially on a Christmas morning, open up their presents, they start getting into something; 'Hey you've got to go over to your mum's!'. So I've slightly changed it this year ... I thought, well it'll be better to have a block of a day, if anything, and to do it as a Christmas day and a boxing day ... maybe swap over in the evenings or late in the evening sometime. Em, so we're going to try it out this year and see how we get on.

For others, a certain expectation had been built up that special or festive occasions such as Christmas and birthdays would be spent together, as Chris explained:

Last Christmas, and this is fairly typical I think, since we split up, is that we ... I think I actually stayed round at Sue's that night so that we could all wake up together Christmas morning. We had Christmas lunch at Sue's house – I cooked. Then we came over here for the afternoon. Then the kids stayed round mine Christmas night, em, Sue went home that Christmas night. Yer, so basically we all have the day together but spread across two different houses. [...] Birthdays are a similar type of thing, em, and strangely enough it's Sue's birthday on Thursday and we're all going up to school to do bowling and with her parents and her sister and her sister's children as well. ... So that's what'll happen, just because the kids want to celebrate the birthday and there's kind of an expectation that I'll be there.

## Summary

My samples reveal a variety of arrangements that can be considered to constitute shared residence. Although the norm for patterns of care was over a one- or two-week cycle – usually broken by holiday periods – these were by no means exclusive: in the French sample, two fathers had also adopted a four-week cycle, where their children alternated their residence every two-weeks and two other fathers provided examples of ‘nesting’ – albeit in the initial stages of separation – where it is the child that stays in the family home and the parents who alternate their own residence. While no other ‘cycles’ of care took place within either sample, several French respondents indicated that they were aware of other families who operated different cycles of care, notably a model described by Poussin and Lamy (2004: 75) as ‘*entre deux vacances scolaires*’; where children alternate their residence every six weeks in line with the school term system.

Crucially, parenting schedules were not static and had often evolved, occasionally involving several different formulations over time. Respondents could also have several residence arrangements running in parallel, adding a certain intricacy to already complex living arrangements. The nature of recomposed or ‘blended’ families, in particular, meant that parents were often subject to a series of parallel commitments. However, while arrangements were dynamic and had often changed several times, the levels of contact with both parents tended to remain consistent, that is, shared in the sense of continuing to operate within the 30–70 shared residence criteria set out within the study.

Where contact with one parent had been minimal at the outset, fathers had initially adopted the primary care giving role in five cases, all of which had been within the British sample, three of these over substantial periods of time. These fathers also appear to have been proactive in sustaining and encouraging the mother–child relationship. Whether these fathers can be seen as a specific sub-sample in terms other than sharing a *de facto* period of solo parenting is questionable however, given that this group of respondents shared many characteristics with other fathers within the two sample groups. In the French sample, it appeared that *de facto* mother residence was more likely than *de facto* father residence where shared residence had not been put into place soon



after separation. That said, only one mother across both sample groups was still the *de facto* primary carer at six months following separation.

Childrens' wishes also appear to have been taken into account more as they grew older. However, a clear difference in approach between the two samples could be discerned relative to the amount of time children were resident in any one household. In the British sample fathers tended to fall noticeably into adopting shorter blocks of residence, while the French fathers tended to veer towards longer blocks of time. There were indications in the fathers' narratives that these differences could be explained, in part, by differences in attitude regarding the psychological wellbeing of the children. Although we are dealing with relatively small sample groups, the fathers' accounts may nevertheless highlight wider cultural differences in the nature of the relationship between parents and children and the state with regard to what is considered appropriate for children at different stages of their development. Moreover, as discussed in Chapter 3, where parents resort to judgement, there are indications that these differences are to some extent also reflected within judicial preferences. The extent to which respective parental and judicial preferences are causal in influencing decision making in this area is as yet uncertain but nevertheless represents an interesting line of inquiry and analysis. That is to say: are public preferences reflected in judicial decision making or does judicial decision making come to influence the way in which couples proceed?

What appears to be uppermost in parents' minds is providing a model of family life that is consistent and well understood by all parties. If it is hard for the parents to keep track of which days their children are with them, it is likely to be all the harder for children. For fathers in the French sample, this consistency was provided by developing residence arrangements that did not leave children in a continual state of flux. For the British fathers, the actual pattern of care was not as important as the routine itself. Sticking to a pattern, whatever it might be, gave the children a structure and consequently a sense of boundaries in which to experience family life.

What becomes clear from fathers' narratives is that no 'one size fits all'. What might work for one family may not necessarily work for another. In addition, a certain amount of trial and error can be seen as an inevitable consequence of developing an arrangement that seeks to work well for all concerned. Crucially, the nature of the parental

relationship combined with more structural considerations is key to understanding current arrangements and how they might develop in the future. It is in this context that attention now turns to exploring the roles of, and relationships between, the various social actors involved.

## Chapter 7

### The relational dimension: roles and relationships

#### Introduction

This chapter explores the *relational* – or familial – dimension that surrounds the practice of shared residence. More specifically, it looks at the roles of, and relationships between, the various social actors involved and examines how these impact on and influence the development and management of arrangements. Crucially, the insights gained from this analysis offer explanatory power when seeking to understand or explain the options that are made available to parents, and the choices that are taken, relative to the *structural* processes and mechanisms – specifically, legal frameworks and social policies – that will be explored in the following two chapters.

This chapter is divided into three main areas of inquiry:

- The parental relationship: looking at the role that feelings play in strategies for communication and decision making;
- The role and influence of children: in fathers' relationships with their children and the extent of their autonomy;
- Wider family support and recomposition: looking at multiple residences and the role of extended family.

#### Shared residence: parenting relationships across households

Shared residence and parenting presumably calls for a considerable degree of cooperation. However, little is known about how parents with shared residence arrangements manage their parental functions: the extent to which they are able to cooperate and communicate with each other; the degree of conflict; the amount of joint decision making; and the way they carry out their parental business together more generally. It is important, therefore, to explore the ways in which the parental

relationship is being constructed and managed across households, not least, as it can provide us with a clearer understanding of which aspects of parental practices act to support fathers most in managing such an arrangement, and which work against it.

### **A time to heal**

It is never likely to be a straightforward process for separated parents to work together in carrying out shared parental responsibilities, particularly where there have been high levels of acrimony. Invariably, separation incurs a breakdown of trust that can make it hard for parents to work together, particularly in the early stages. As one British respondent, Richard, remarked:

To start with tensions run very high, you know, there's a breakdown of trust in a relationship. Typically people sort of fall into trying to score points or score victories or hurt the other person, you know, because they've been wounded or whatever. And you have to go through that phase where you bed down basically and begin to work together again as parents in the interests of the children, rather than trying to score pyrrhic victories.

The extent to which fathers felt they and their ex-partners were able to subordinate their own feelings towards each other in order to coordinate the management of their children's lives varied significantly, from those who felt they managed to cooperate effectively to those who, to varying degrees, found it easier to disengage from each other. On this basis, fathers could be divided loosely into two groups reflecting this broad division in the nature of their parental relationships: first, *cooperative co-parenting* – reflected in some form of working parental relationship; second, more *parallel parenting* approaches, where little or no communication took place between them, each essentially 'doing their own thing' (see Maccoby and Mnookin, 1992; Ricci, 1997).

These approaches were by no means set in stone and parents who initially found it difficult to communicate with each other over the day-to-day practicalities of a shared residence arrangement often found that exchanges became easier over time. Indeed, 'time' was often cited by respondents as being a great healer. What became clear from their accounts was a recognition that parents needed a period of time in which to come

to terms with the nature of events, work through any feelings of grief, pain or animosity and perhaps especially any feelings of insecurity, without fear of being sidelined in the lives of their children.

Where parents had not become involved in any long-term dispute over residence arrangements, these feelings tended to take less time to resolve and 'good' communication, albeit concerning the children, was able to develop more quickly. On the other hand, where there were issues of child-contact and residence outstanding, more parallel approaches tended to prevail. Although these issues were able to be resolved eventually, certain patterns of behaviour could set in that became harder to break as time went by. What is clear, is that the majority of 'parallel' parenting approaches stemmed from a lack of agreement over the nature and level of contact and residence. As a consequence, there was often a sense that parents were still 'keeping score' either in order to remain 'in control', or equally, to have 'a defence' against the other parent should they be minded to limit contact-time or, indeed, to remove the children from the locality.

It appeared that a mutual acceptance of each other's shared parental role in the lives of the children was inclined to make the period of 'bedding down' an easier one. Richard provided a good example of how feelings of insecurity could subside as parents began to re-establish a sense of trust, albeit a trust centred solely around the common goal of raising their children.

Time heals lots of wounds ... for example, both children were ill yesterday and off school and it was [their mum's] day to collect them. But the school rang me to say they were sick and needed collecting. I was closer to the school at the time of the call than Kit was. She was stuck in [a meeting] and wasn't going to get home until 3.30[p.m.]. So I collected them and took them home and put them to bed. Now, nine months ago, Kit would have asserted her maternal rights to sweep past on her way home from work, collect her sick children and have them on, you know, on the Monday night which was hers, but she was quite happy to let them rest up and stay with me last night, as an extra night, you know? I think it's just, as you move on, you become more trusting that no one is keeping score anymore. ... There were times when Kit would have seen it as disadvantageous to her position, or case, to

allow me to look after the children when they were ill and have an extra night.  
Now, no one's counting any more.

### **Vulnerability**

The notion that parents may be 'keeping score' will be returned to in more detail in the following chapter – specifically where parents have taken more litigious approaches to establishing care arrangements – but its significance cannot be overstated. Feelings of vulnerability, relative to structural as well as more relational issues, will inevitably affect the ways in which parents relate to each other, particularly perhaps in the initial stages of a separation. Parents, having suffered a fracture to 'their' family in relation to the parental dyad, now attempt to assert, hang on to, or renegotiate their parental role within 'their' family relative to the parent–child dyad. Indeed, we should be mindful here that the desire of parents to establish good contact arrangements with children in the wake of separation do not take place within a vacuum but rather within the context of a broader 'family life'. For the most part, whether parents have played a greater or lesser role in the day-to-day care of their children they are, nevertheless, both part of a much broader social fabric that ties them into wider communities such as kin, school and friendship networks. What is at stake when parents separate is often more than a loss of day-to-day contact with their children. In addition, a whole host of other daily interactions that make up aspects of their social and psychosocial identities are called into question.

Many fathers talked throughout the interviews of their feelings of vulnerability relative to their position as joint carer. Many feared that, despite often long-standing arrangements, this could be taken away from them at any time. A particular fear held by several fathers was that the mother might decide to move away from the area. Bruce, for example, whose four-year-old daughter, Sadie, is with him from Friday afternoon until Sunday evening of each week, was fearful that any moves on his part to establish contact with Sadie during the school week or, indeed, formal 'Parental Responsibility' for her – since they had been unmarried (see Ch.7 for a discussion of how parental responsibility impacted on arrangements) – might result in his ex-partner moving back to the town where she used to live:

We have got an agreement. It's not through the courts or whatever, but what if she does go back to [where she used to live], if I do upset her? I will have to give up my job and move wherever she goes because I can't go [250 miles] and back to go and pick Sadie up. Four and a half hours, it's a day's round trip!

A French respondent, Husain, also explained how initially, he had similar fears that his 10-year-old daughter's mother might move away from the area:

I thought I was going to lose her, and for me, I was really scared, because here in France there are all sorts of problems; sometimes women will leave their husbands and go off to live in the provinces. I thought that that was going to happen to me at that stage, but it didn't happen because I talked it through with her mum. Even though she wanted to divorce, I wanted to see Berenice as much as I possibly could. I couldn't live without seeing Berenice for six months, it just wasn't possible.

In Husain's case, where communication with his ex-wife was reasonably good, they were able to talk the issue through. In Bruce's case, the more parallel nature of their parenting relationship meant that these fears were left unspoken and unresolved. While parallel parenting did not mean that shared residence was unsustainable, it did however inevitably affect the level of communication between parents and the manner in which it was conducted.

### **Communication**

Where parents were taking an active role in their child(ren)'s transition from one home to the next, communication between parents tended to be more comprehensive than those who did not. These parents would tend to discuss, however briefly or in depth, aspects of the children's lives, such as progress at school, homework, illnesses, any upsets that had occurred, discipline, forthcoming events and extracurricular activities and whether any changes to the schedule might be necessary. Perhaps unsurprisingly, the level of communication tended to be more comprehensive where there were younger children. This would generally necessitate face-to-face contact as well as other forms of exchange.

Several fathers commented on how much they valued these talks. One British respondent, Kyle, explained why communication was important in whatever form it came in, and that although face-to-face communication was not always possible, it was, nevertheless, healthy not only for practical reasons but it also enabled their 8-year-old son, Roly, to see his parents getting on together which had a knock-on effect on his sense of wellbeing more generally.

Good communication, you know, communicate! I think it's important to have meetings and for Roly to see both parents operate together, even if it be for a short block of time. A sit down at the table, discuss a few things ... even if it be a social thing, I think that's important. If Roly can see that both parents are happy and they're operating fine, you know, I'm a great believer that that's important.

This theme of letting the children see that you get on, despite any feelings of animosity that parents might have towards each other was a recurring one in both samples. In addition, good communication, albeit centred solely around the child, appeared to be a precursor to more cooperative forms of co-parenting that may include, for example, attending child-related events together, such as school parents evenings or performances. Richard builds on this idea as he extols the virtues of communication for a shared residence arrangement to be healthy:

Communication's really important. It has to be good. And what I find is that not only has it got to be good operationally, it's got to be good emotionally as well. Because if Kit and I go for more than say a week without talking to one another about something to do with the children, um, you find that a kind of frison of tension builds up and Kit will wonder what's going on. So what I'm saying is, that there is a merit in communicating for its own sake as well as just to relay information, practical information about the kids and what they're doing. Because if you don't ... communication, even if it's just trivial, builds trust and cooperative working and thinking, and if you communicate, little things get mentioned that you pick up, which would otherwise drop through the net.

While the notion of letting one's children see that you get on was a prevalent one, there was, nevertheless, the occasional exception to the rule. Steve, for example, explained why he thought that a certain amount of acrimony between parents could be a good



thing if children were not going to harbour thoughts of their parents getting back together at some point in the future.

Well there's kind of a theory around isn't there that actually children who survive divorce, survive it if they understand why their parents aren't together and if there's a bit of acrimony that makes it more understandable. Whereas if they get on well, they think 'Well, this is my mum and dad, they just live apart'. On the whole [I think it is important for children to see their parents getting on], of course I do, but I think you have to be sensitive to the fact that even fairly bright switched on kids still hanker after this dream [that their parents may one day get back together] unless you make it absolutely clear to them.

Steve was not the only father to indicate that children might hanker after their parents' eventual reunion, however fanciful an idea this might appear. David described the intensity with which these desires can linger in the minds of children, regardless of the amount of time that has passed since the separation or, indeed, the nature of any new family circumstances:

No matter how much you dress it up and whatever you buy them, whatever you give them, however great the house is, however much time they have for [my new wife] and [their mum's new partner], if you have a moment with them on their own and say 'well would you prefer mum and dad to live together?' 'Yes!' is definitely the answer.

### **Communication strategies**

Parents communicated in a variety of different ways and at different times. Kyle described how, in his case, face-to-face communication with his ex-wife would take place every Saturday morning as a matter of course – whether picking his son up or dropping him off. He explained why Saturday mornings worked best for them:

Those times are important, and it seems to happen more over weekends. I think weekdays when people have been working, then ... people are probably a bit tired and might be a bit edgy. First thing in the morning when you're bright and picking up ... I think that's a good time to tackle it and have a sit down and talk about his education or what's happening or forthcoming events.

Face-to-face contact was not always a prerequisite for good communication and a variety of methods and tools with which to converse meant that the majority of fathers in each sample felt that exchanges between themselves and their ex-partners worked reasonably well. Kyle explained how email had become an invaluable tool with which to outline events or propose future plans. This provided a means by which to ‘mull things over’ before meeting formally to discuss them:

Internet’s fantastic isn’t it? You know, I email little notes and stuff; timetables and stuff like that. If there’s anything that we need to say and if I don’t feel like I want to talk to Freya, I’ll just email the stuff off and then we’ll talk about it on a Saturday morning.

Even for those parents who avoided contact with each other as much as possible, the need to communicate on some level was not completely done away with. Several fathers explained how texting had become the perfect communication tool. For Martin, rather than face-to-face contact or even talking over the telephone, he explained how he and his ex-wife use texting as their primary form of communication:

On the odd occasion I’ll chat to her, over something, you know, very simple. But text messaging has been fantastic! The good thing about text messaging is that it can be unemotional. And you can communicate, you can make arrangements, you can think about how you want to phrase things, which is good. She can think about how she wants to say things to me [and] things are less misconstrued.

### **Using the children to communicate**

There was a general consensus among both the French and British fathers that parents should generally refrain from using the children as a means to communicate with each other. They felt that this would be an unfair expectation of them. David spoke for several fathers when he explained why communication between himself and his ex-wife is never done through the children:

[We] try not to do it through the children so they’re not caught in the middle. And obviously they usually get it completely bloody wrong anyway, when you tell them to say something and then [their mum] ends up phoning up and saying

‘What’s Oli talking about?’. [But] it’s OK! We speak sometimes more than I’d like it, you know, [but] there are three of them and they’re back and forth, back and forth [and] there are complications [that need to be dealt with].

These sentiments were echoed by many fathers who felt that communicating directly with the mothers greatly reduced any misunderstandings. However, for those parents at the far end of a *parallel* parenting regime, using the children to relay information, often important information, all too often led to confusion and unhappiness on the part of all concerned. Simon and Ros, for example, even after five years of operating a ‘week-on–week-off’ arrangement with their children (Amy aged 10 and Jack aged 9), still found they sought recourse to solicitors over events that, in his opinion, should only require a modicum of ‘reasonable’ dialogue. Simon concedes that communication between himself and Ros is poor. Indeed, to avoid unnecessary conflict, Simon and Ros found that avoiding contact with each other altogether had become the best strategy. He offers this example of how parallel parenting, reflected in poor communication, unilateral decision making, rivalry, stemming from a desire to be in control, and a consequent disregard for the other parent, leads to confusion and upset, particularly for the children, who are more often than not left caught in the middle of events that might have been resolved amicably:

[Last year] Jack had to go into hospital [for an operation] and the appointment landed on a week that he was with me. Jack had been primed to tell me that [his mum] would be taking him but he immediately said ‘But I’d rather you took me in’. That’s mainly the reason why I phoned up. I said ‘well, it’s a week when he’s with me, I’ll take him in’. And she absolutely hit the roof. ‘No!’ she said ‘No! I’m his mother, I’m taking him in! I’ve arranged this’. [...] I spoke to Jack again, and he actually started crying. He said, ‘No, I would like you to take me in’. He then came up with a good compromise; if she took him in, to keep her happy, but I would pick him up late in the evening ’cause he didn’t have to be in overnight. So I rang and suggested that. That wasn’t going to happen! It ended up, solicitors! She got her solicitor to write to my solicitor to say what the arrangement was.

The level of acrimony that this lack of concord and poor communication produced also built up and spilt over into other aspects of the children’s lives, as Simon went on to reveal:

The day before [the operation], she went to the school, while the kids were in class, got the [headteacher] to take them out of the class, go to his office and said, 'Right! ... I'm going to do this in front of [the headteacher] so that he can hear. Who do you want to take you into the hospital?' [...] I picked them up from school that day and I sort of said 'Look, what's happened?' and they explained what it was and er, both bawled out crying, crying their eyes out, and you know, 'The arrangement is that you have to take us to mummy's at 8 o'clock tonight'.

We should be mindful here that certain behavioural patterns may often be carried over from prior relationships. In Simon's case a more parallel parenting approach may have existed for some time within the marriage prior to separation. To this end, we should be careful in assigning any causal relationship to the different parenting approaches that parents had become party to.

#### **'Parentalism' and the parent–child bond**

The above description apart, a 'reasonable' level of communication was apparent throughout both samples though it was generally restricted to issues involving the children. Indeed, a key element for most fathers in the study has been their ability to separate their relationship with their children from the relationship they have with their children's mother. Chris, for example, explained how he and his ex-wife Sue had managed to remain friends, but that the only 'bond' they now had was in relation to raising the children:

We're good friends and we were good friends before we got married, and we've kind of gone back to that, er, but neither of us have any desire to get back together ... You know, you haven't got that bond anymore. The only bond you have is you're doing the job of raising the children.

Husain, expressed similar sentiments to those of Chris in terms of there only being a bond now with his daughter. While communication between himself and his ex-wife was described as 'good', he made it clear that any conversation revolves solely around their daughter. But, unlike Chris and Sue, face-to-face contact is kept to a minimum. A Friday-to-Friday arrangement means they do not usually see each other – one dropping

their daughter off at school in the morning, the other picking her up after school. Husain explained that he prefers to talk to his ex-wife by phone:

Face to face can be difficult. Well, if I'm honest, it was my wife that left me, so I've found it hard to forgive her. We only talk about Berenice, the conversation revolves only around her, I'm not going to say, 'Ohh, you've got some new shoes...!' No! When it's over, it's over. But when it concerns Berenice we communicate well, if there's a problem at school, or over health ... But on the telephone, when we need to discuss something, we talk, we say hello, it's not a problem, but ... we would never go out together to eat [for example] and like that it works reasonably well. Berenice is fine about it because she gets to see her dad and her mum, one as much as the other, and that works well.

The overwhelming majority of fathers who were able to co-parent cooperatively described their relationship with their ex-partner in similar terms to those of Chris and Husain. The notion that the only parental bond is one of raising the children is an expression of the notion of 'parentalism' (Rivier, 2002) outlined in Chapter 2 of the thesis; namely, that the parent-child 'bond' has come to replace the parental or spousal 'bond' that formerly acted as the central mechanism for the regulation of family life.

### **Decision making**

For those parents who had little face-to-face contact with each other, either intentionally or by force of circumstance, communication tended to be poorer. It must be borne in mind that fathers whose children resided with them only at weekends (i.e. from Friday until Sunday or Monday morning), and who were not taking many of the routine day-to-day decisions, often knew very little of their children's week-day living arrangements and consequently felt that they were somewhat excluded from any major decision-making processes. For Bruce, his exclusion from decision making is directly related to having no contact during the school week:

She will not let me have any involvement during the week. She won't let me phone, because she said it will upset Sadie [...] She decided to put her into pre-school and that sort of thing. I had no say in it. That was it, she didn't even tell me that she was going, you know, I found out when Sadie started saying 'I'm going to pre-school'. I tried to get some information the other day: What do the teachers say

about Sadie? How's she getting on? How does she mix with other children and that sort of thing, and, you know, well what happens here? Um, and Sadie keeps saying to me, 'Oh, I want you to come to pre-school', and 'Can you come one day?' and I said, 'Oh, that'd be nice'. ... But no! ... I'm left in the dark. [...] But there is no talking to Alison, you know, you can't do it! She's very unreasonable, she is like a spoilt teenager.

Several fathers explained how they would often be informed of decisions 'after the event'. In some sense these incidences were in keeping with the notion of individual parental responsibility; as long as the activity fell during the fathers' or mothers' time with the children, the event should theoretically not be a problem. However, for issues of wider significance to both parents this could prove problematic where one parent unilaterally made the decisions without prior discussion; for example, by changing the child(ren)'s doctor or dentist without informing the other parent. For one respondent, realising that his ex-wife had filled out his 10-year-old daughter's choice of secondary school form unilaterally, without any discussion, served only to embed still further an already fractious relationship. While in Bruce's case, it transpired that his daughter's mother may have changed Sadie's surname without any consultation with him, despite having his surname on the birth certificate.

Sadie had this medication from the doctors, or whatever, and on the bottle was um, er Sadie [Jones] and Sadie did say the other day 'Oh, I'm Sadie [Jones]' and I said 'No, you're Sadie [Smith]' and she's only mentioned it once and that was it, but what Alison is doing or what she's telling them, I don't know, but on the birth certificate it's Sadie [Smith].

It was not, of course, only the mothers who could act 'independently' in this regard. One French respondent, Gerard, who lives approximately 25km from his ex-partner (an equivalent round-trip car journey of an hour-and-a-half), had been operating an alternate-weeks arrangement from Monday until the following Monday for a period of one year. A desire to reduce the amount of travelling time he had to make each day, coupled with a lack of communication, trust and respect in their parental relationship led to Gerard unilaterally enrolling his 6-year-old daughter, Jasmina, in a local school near to where he was living unbeknown to his ex-partner, Colette. As Colette already had Jasmina enrolled at the local school where she lived, this event caused a '*scandale*' and

led eventually to court proceedings on the part of both parents for the 'sole' custody of Jasmina. On hearing the evidence, the judge opted to make a shared residence order in favour of both parties that Jasmina should spend 15 days with her father and 15 days with her mother, consecutively.

In sum, reflecting on the way parents constructed and managed their relationships, it would be fair to say that the majority of respondents were able to engage cooperatively and communicate effectively in order to provide their children with environments they would feel happy and secure in. A period of 'bedding down' was often required in order for parents to come to terms with the changes that had taken place in their lives and in order to rebuild a sense of trust. Where this was done with a mutual respect for each other's parental role and without fear of being sidelined in their children's lives, communication strategies and cooperative parenting tended to develop more quickly.

Parallel parenting tended to result from unresolved issues of child contact and residence. These approaches were often reflected in greater levels of acrimony and by greater differences in parenting styles. It would appear that the level of acrimony is not necessarily a barrier to sustaining a shared residence arrangement. Nevertheless, it can make a major difference to the way in which the arrangement is conducted, which can act to hinder the development of such approaches. A lack of communication between parents or lack of mutual respect for each other's parental role is seen to result in minimal joint decision making and poor management, impacting on the way in which these parents proceed in relation to more structural processes. The converse could also be true in that structural procedure affects the ways in which parents make arrangements. In this sense, it could be said that the difference in the ways in which parents manage their parental functions is more of a symptom of different parenting approaches than a cause.

Finally, an absence of any striking cross-national differences relative to the level or nature of communication, decision making or expectations among parents is in part inevitable given the highly individualised personal histories of respondents. It should, however, act to draw our attention in greater measure to the similarities that have been drawn out through the fathers' narratives.

## **The role and influence of children**

The relationship between parents following a separation is not the only one likely to change. Parent–child dynamics can be particularly challenging in this context and are just as likely to evolve in different ways. This section looks at the nature of the father–child relationships, explores their influence over events, the extent of their autonomy and how fathers see arrangements changing and the types of concerns they have. It begins by asking whether discernible differences could be detected in fathers’ relationships with their children before and after parental separation.

### **Relationships with children**

Most fathers claimed to have experienced very little difference since separation in their relationships with their children relative to the amount and quality of care they provided and the sense of ‘closeness’ they felt towards each other. The overwhelming majority spoke of how they had been centrally involved in their children’s lives from the start. Many claimed to have been, if not equally, then more involved in their children’s lives than the children’s mothers had been. Indeed, some claimed that while their relationships had changed very little, this had not necessarily been the case for the mothers of the children, as one British respondent, Jim, pointed out:

I think they [now] spend more quality time with their mother [...] I think, when we were together I tended to throw myself into the kids. So they saw a lot of me but they didn’t really see a lot of their mum, and when they did see their mum, they didn’t really have that relaxed, flexible, laughter time or fun time with her. It was just sort of bath time, bed time, and now she does a lot more, you know, hobbies, and bits and bobs and get down and play with them more and be daft with them, which is much better. So that’s a good thing.

Other fathers felt that their relationships were no longer mediated in some way through the mother. A French respondent, Benoit, explained how he experienced a certain feeling of liberation in his relationships with his children after the separation. Indeed, he claimed to no longer ‘feel like the same father’:



I don't feel like the same father at all! I'm not the same father, because I'm a much freer father. [...] you're able to want to do things with the children, with our children. You can do them without your wife telling you, 'Oh no, you can't do that, you've got to be back by such and such a time'. I'm not at all the same father. I'm 'father' in my soul, but not at all the same. You don't have the same reactions when you are a couple as when you are divorced. ... It's a dialogue all week. That's the advantage of shared residence. It's a dialogue all week and you're able to keep up with everything; the little cut on the hand ... you're aware of everything that's going on, so you can play the full role of dad and the full role of mum and that's really important. We are really close, we are a united family. While before we were a family, but mum was one thing and dad was another.

Many fathers spoke of the need to break down the stereotypes that surround parenthood; the role of the father as one thing, the role of the mother as another and that shared parenting provided the platform on which this could take place. Many also explained how they had been proactive in developing a caring role soon after their children were born. Gerard, for example, revealed how he had deliberately left his job when his daughter Jasmina was very young in order to be a 'stay-at-home' father. He maintains that this created a very close bond between them:

Jasmina loves coming to her dad's, first off because she adores me, because me, before I separated from her mum – well before, I had a clothes shop. I sold my shop at the time and for over two-and-a-half years I brought her up on my own because her mum worked. So, if you like, I had a really strong relationship with my daughter that was really, really close. From when she was one to three-and-a-half it was me that looked after her all the time because her mother was working all the time.

The fact that many fathers indicated that they had shared equally in the care of their children or indeed been their primary carer, made it inconceivable to them that they would not automatically share the care of their children when they separated, as Colin highlighted:

I'd had a very big part of the care up to that point, more, probably more than half. Definitely more than half in the last couple of years before we separated. She was

setting up a business, she set up a business with the guy she went off with, you know, so I was not seeing a lot of her in that last year, year and a half. I would put Toby to bed probably by about seven at night, pick him up from school most days. My relationship with the school and the other parents was much more developed. [...] Quite often she'd be off [on a work related project] or something [over the summer], and Toby and I would trudge off somewhere on our holidays. So in a way, the way things are now for me and him hasn't really changed. It's still the two of us, tootling around the place as it has been for several years.

Although not a precondition for shared residence, the samples show that a large proportion of fathers had been centrally involved in their children's lives prior to the parental separation. In addition, many fathers claimed that their ex-partners had been heavily reliant on them in terms of domestic as well as care work, whether for work-related reasons or not. Bruce, for example, explained how even though he would work during the day he would invariably arrive home to take on 'the second shift' (Hochchild, 1989):

Very, very hands on dad. Alison didn't work. I'd come in here [after work], I'd be playing with Sadie, I'd be the one cooking the tea, [...] I'd be bathing Sadie, I'd be putting her to bed, you know, I'd be feeding her, changing her, ... Alison might put the Hoover round a bit. I was flat out in the evenings, I wouldn't sit down till 10 o'clock. I'd sit down and think, bingo!

### **Questions of autonomy**

What did fathers feel about their children's level of involvement in decision-making processes? Was there ever a right time or a right age at which to consult them or take their views into account? Richard echoed the sentiments of many fathers in both the French and British samples in claiming that children must be given the chance to feel involved, whether this be specifically in relation to immediate post-separation residence arrangements or more generally, for example, in relation to wider family recomposition and any new living arrangements this might entail.

I think they need a lot of say, and we felt that, that they do need a lot of say. They certainly need to feel as if they've got a lot of say. I mean, one of the skills of parenting and er, negotiation generally, is to make people feel heard. The degree to

which they're really heard may differ somewhat from that but, you know, they have got to feel heard. And in our case the kids were, you know, consulted about how they felt and what their aspirations were and em, we've managed to build a sense of expectation and excitement in their hearts and minds.

Giving children autonomy – specifically in relation to the development of arrangements – without compromising them, often proved a difficult balancing act. Martin, who has a care arrangement at the lower end of the shared residence scale in terms of overnight stays, highlights the dilemma that is often faced by parents when relationships break down. He is aware that he could all too easily be drawn into an emotional 'tug of love' with his ex-wife over their 7-year-old son, Woody:

I refuse to let myself emotionally pull at him for my own gain, you know. I want to see him all the time, but ... er, I want him to know that I want him all the time but I don't want to push him, pull him, so that he feels that, oh, I'm going to upset my dad if I don't.

For Martin, the difficulty arises in how to balance letting Woody know he can spend more time with him if he wishes, without putting him in an impossible position with his mother. The potential to unintentionally emotionally blackmail Woody is compounded by Martin's perception that his ex-wife Jenny has no compunction whatsoever in appealing to Woody's emotions with regard to any extended contact Woody might have with him:

She manipulates his emotions. ... she'll say 'Yes you can [stay longer] but then I'll miss yer! Then we won't be able to have tea by the fire on Sunday night' or 'then I'll be on my own'. It's all that sort of rubbish which there is no sanction against. No court order [can] sanction against that. That is just emotional blackmail and that's always been my biggest fear. He'll ring her up [to ask if he can stay longer] and she'll make a bit of a fuss, but just enough of a fuss [for Woody] to know that he's kind of upset her, but she's a good enough person to let him do it. A couple of times, she's got stroppy about it and then said, 'Right, well you may as well have him all the time'. And [Woody] said to me, that mum says, 'Oh, you don't like spending time with me' ... Jenny will say to him, 'You don't like spending time with me anymore, you're going to just want to live with your dad all the time'.

Martin felt that, despite his son's young age, he'd been forced into impressing on him an understanding that he has agency within the current residence pattern and that it is within his power to change things if he so wishes:

I picked him up from school one day and he was all wound up and upset and as we were driving back he said, 'Oh, mum said that she's going to stop me seeing you if ...' it was something like, watch another James Bond film. And I said 'Woody, there's only one person in this world who could stop you from seeing me and that's you.' I said 'Anyone else, doesn't count.' I said, 'If you said to me, dad I don't want to see you, then that's fine, that's absolutely fine and I'll listen to that and adhere to that, but your mum, nobody, can stop you from seeing me.' At which point, you know, he relaxed. And that's as I will fight it from now on! [...]  
As long as he is the one in control, then I am happy.

Through Martin's account, we can again see the difficulties that are encountered when parents cannot agree about arrangements or communicate with each other. Extra pressure is likely to be placed on children to make the decisions that adults would normally be making for them; for example, where Woody must telephone his mother to ask permission to stay an extra night with his father. Far from providing the children with autonomy, this may be placing an unfair burden of decision making on the child, who is likely not to want to displease either parent.

### **Changes to arrangements**

There was a general acceptance among the British sample that as children got older they may need more say in the way arrangements developed. Simon explained that:

As they grow older they might go through phases where [my daughter] may, when she gets to 13, or 12 or 13, and different hormones are kicking in for her, she may go through a phase where she wants to be with her mother more! And ... then it could come the other way. As long as we're sensible [enough] to say the most important thing is that the children go where they want to be. Er, and Ros sort of agreed to that, the various times that we have talked about it.

There were notable differences between the British and French samples in this regard. While British respondents would invariably talk about how arrangements were likely to change as the children grew older and became more independent, the French respondents were noticeably less prone to bring this up as an issue. We need to be careful, however, in jumping to any conclusions that British fathers were more open to change or flexible care arrangements or, indeed, that they might be more willing to respect the wishes of their children as they got older.

First, given the marked differences in the general patterns of care that French fathers adopted; namely, much longer periods or blocks of time resident in each household (outlined in Ch. 6), perhaps the apparent willingness of British respondents to be flexible regarding arrangements – often talked about in terms of changing to slightly longer blocks of time as they get older – merely reflected the fact that more satisfactory arrangements for older children had already been achieved for children of those in the French sample. Secondly, while French respondents may not have raised this particular aspect of managing shared residence as an issue as much as their British counterparts, the narratives, nevertheless, reveal that where it had been an issue it had been acted upon indicating an equal willingness not to be too rigid in their approaches.

Within this section, similarities across the two sample groups again appeared more striking than any cross-national differences; in particular, the level to which fathers claimed to have been centrally involved in their children's lives and the sense of 'closeness' they felt towards each other. The fact that several fathers saw relationships with their children as having been, to some extent, 'mediated' through the mother is perhaps not surprising. The notion that fathers' relationships with their children can be mediated in this way is not new and a developing literature around maternal gatekeeping – that looks at the relationship between mothers' beliefs and behaviours relative to father involvement (see e.g. Allen and Hawkins, 1999; Fagan and Barnett, 2003) – can be conceptualised within a social construction of gender framework, within which the fathers' narratives can also be placed.

Shared residence appears to have provided respondents with an opportunity to challenge certain external validations of their identities as fathers, largely allowing them to set out their own standards relative to care and family practices. These concern aspects of

authority that might normally have been restricted within intact couple households or, equally, under more ‘standard’-type contact arrangements, as they play out their social role as ‘father’. As Benoit indicated, shared residence allowed him to ‘play the *full* role of dad and the *full* role of mum’ (my emphasis). In this way differentiated conceptions of family roles are brought into question.

With regard to the extent of children’s autonomy and their influence over events, in the main, fathers had a sense that children needed boundaries and that adults were the best people to decide what arrangements would be best for them. Although this might potentially limit the child’s autonomy in practice, it was nevertheless recognised that children needed to feel heard and included in the way events unfolded in their lives. In addition, it was felt that consistency in arrangements was more beneficial than being overly flexible. These responses may be indicative of two samples whose children were of a younger age. Finally, while British fathers talked a lot about the possibility of changes taking place in arrangements as the children got older, it is possible that older French children may have been more satisfied with the longer periods of residence they were subject to and, as such, this did not prove to be an issue with which their fathers seemed overly concerned.

## **Wider family support and recomposition**

As families reconfigure to form new sets of relationships and alliances, it becomes equally important to understand the part that is played in the development of arrangements by step-parents and new partners, step-brothers and sisters, and new siblings. What impact, for example, can multiple residence arrangements have within one household? In addition, what wider practical and/or emotional support has been forthcoming to fathers, in particular, through the input and influence of new partners, grandparents and/or extended kin, friends or self-help groups?

### **Family recomposition and multiple residencies**

Crucially, the shared residence arrangements under discussion do not take place within a father, mother and biological offspring vacuum. Instead, many of the fathers – and their ex-partners – in both samples were involved, not only in new adult partnerships –

that may or may not involve new biological children – but in multiple residence arrangements, that might include step-children, as well as contact arrangements with children and/or step-children from a former relationship.

Brian, a British father of three, who reported having a reasonably good relationship with his ex-wife explained that his new wife also has an amicable relationship with her ex-husband, and that his step-son, Daniel, also alternates his residence between them and his father. The two arrangements run in parallel, although Daniel spends an extra night with Brian and his new wife:

Daniel does stay with us an extra night [Monday until Thursday] and he does miss my children when they're not there. And likewise, [...] when they stay and he isn't, he doesn't like that much either, because he likes having them around. Because ... they're a similar age, he's got someone to play with, you see, because he's an only child.

Brian's reference to Daniel missing his children raises some important issues around multiple residencies – that is, running two or more residence arrangements in parallel for different groups of biological and/or step-children. For example, the nature of the relationship between step-siblings may prove positive as is the case with Daniel and thereby work to facilitate the arrangement. Equally, it may prove negative and thereby impact on arrangements in a detrimental way. If one set of siblings are present in the household much more than the other set or, indeed, permanently, this could potentially lead to one set of siblings becoming more like 'guests' in their own home, perhaps with the net result of drawing certain children to one household over another.

David, who spends more time with his step-children than his own three children explained that sometimes it is nice to just have his own children in the house without his new partner's three. This could provide a certain 'quality' time with them that was normally unavailable, given that his wife's three children only spend two nights in eight with their father. This need to provide a certain amount of time for each genetic set of siblings to establish their own unique identity within a now wider family unit was taken up by several fathers who explained how it is important to give each set of children (biological siblings) their own time and space. It could, as one British respondent put it,

dispel any sense his children might have of being ‘visitors’ in the house and provide a way of building up ‘a little family unit’ within the larger one.

### **The influence of half-brothers and sisters**

Where parents had repartnered this was often within a context of further children. The extent to which these children’s lives were integrated varied. Although Husain will not enter into general conversation with his daughter’s mother other than when it concerns Berenice directly, he nevertheless feels it is important, where her half-brothers are concerned, to integrate the two halves of Berenice’s life. He explained how he will always ask after her half-brothers:

Her mother has had two boys now, Theo, who is five-years-old and Jean, who is one-and-a-half. And that’s going really well. I’m always interested to know how that’s going. When she gets home on Friday evening, I always ask her how her little brothers are. ... [While the two worlds are] a little separate at the moment, they’re still a little young, I did ask Berenice one day if she would like to invite them perhaps for her birthday, and she said yes.

Husain explained that allowing Berenice to maintain and even integrate these links across households and between the two halves of her world is likely to promote good feeling on her part – knowing that her two brothers are welcome – and thereby make her more likely to feel positive about dividing her life between two households, and thus indirectly facilitate the shared residence arrangement. In addition, whatever Husain feels about his ex-wife, he explained that he is unable to be angry with two young children who have had no say in the way events have unfolded.

### **Step-children**

When parents separate, the arrangements they make for biological children may not be their only concern. Several fathers, in the main from the British sample, had also been living with step-children from their partners’ former unions. Many had built up close relationships, which made it all the harder for fathers and children where residence had become an issue. Martin, for example, explained that despite having a shared residence arrangement for his son, Woody, he had now lost contact with his two step-daughters (Helen aged 20, and Eve aged 17) completely. When Martin and his ex-wife Jenny



separated, Helen was 15 and Eve was 12. Martin feels this loss is all the more complicated and upsetting as he maintains that over the six years of marriage with their mother, his relationship with them was not just friendship – that he had acted as a father figure since the girls did not see their biological father. Martin explained how, in the initial period after he and Jenny separated he would take Helen and Eve out separately each week:

We would go out for pizzas, we went to concerts, we went to the cinema, so that I kept in contact with them. I didn't want them to feel that they were being rejected in any way.

However, it became clear to Martin that the girls began to feel a strong sense of obligation to support their mother and as a consequence they felt that they should not carry on seeing him:

At that point, Jenny had had a go at both of them to the extent of, you know, you shouldn't want to be with Martin, because it upsets me so much. And at that point things started to go foul. At that point Jenny started to threaten me with not being able to see Woody if I didn't do this, that or the other.

**Q: Did you express your concerns about the girls as well as about Woody?**

Oh, absolutely! Yer, and I wrote to them and I wrote them both letters saying how much I love them ... but er, but there was no way I could hold on to them. And at that age, at 12 and 15, they have their own minds, so I couldn't argue or work with that. So although it hurts and for a long time it was the thing which hurt the most, their loyalty is to their mum.

Step-family unions can bring with them their own problems along with their joys. David has three children, as does his new partner, Sarah. In addition, David's ex-wife now has a young baby with her new partner so there is now, in his words, 'a whole complicated umbrella that they are stood under'. He explained how, for the children, having breaks from each other also acted to keep their relationships on an even keel:

They get on fantastically well! I think that variation helps them get along, because they miss one another when they're not here. You know, you can have too much of a good thing, can't you? And the children argue when they're under one another's feet all the time. [...] And you get that question, as soon as Sarah's children arrive home, 'are the boys here tonight?' and then mine'll come and say like [...] 'are Thomas, Megan and Robert here tonight?'

Another respondent explained how the relationship between the step-siblings had to be handled with tact and care as the 'family of six' moved into their new home. As with David, he indicated that the different sets of siblings not seeing each other all the time could be quite a healthy thing, and as a consequence facilitate the overall shared residence arrangement:

They all have separate bedrooms. [...] and] the kids are in pairs one above the other so that the siblings, the genetic siblings, are one above the other, so that if they start playing noise, you know, loud noise or anything like that, they're going to annoy their brother or sister, not their step-brother or -sister. Because you don't expect harmony between brother and sister, and you can't afford disharmony between step-brother and -sister, 'cause you want to try and work from a position where you come together as two families of three. And you respect that identity. There is always time for two families of three but you move towards an aspiration over the course of months and years where you become a family of six as well.

### **New partners**

Over half of all respondents in both samples were not living with a new partner at the time of interview, or where they did have a partner the children were not aware of it. Fathers' reactions to any new relationships their ex-partners might have were varied. Some fathers remained indifferent, while others were unsure if they had repartnered or not. Several expressed their concerns over the mother's choice of partner; sometimes in no uncertain terms. Occasionally, however, fathers saw new partners as a welcome development – in particular where they were seen to be providing a stabilising influence on the mother and consequently the children. As Kyle indicated:

In fairness, Freya's new boyfriend, Damien, I think he's a great guy. I think the stability has come back completely [...] I think ever since Freya met this guy things really got back on track and she's sort of found her feet again.

Indeed, Kyle pointed out that it was only after Freya met her current partner that the shared residence arrangement really began to develop. Up until that point their son had been resident with him for approximately 90 percent of the time.

David also explained how his arrangement had become more formal after his ex-wife had met her new partner:

It became more formal when she stopped going out so much and leading that life and she met somebody, em, her current partner, Andrew. And they've got a new baby now and so things, from that point of view, settled down quite rapidly and it then became more formal.

Bruce and Colin, on the other hand, provide examples of where fathers have misgivings about the mother's new partner. Each hold particular concerns about their child's welfare. Bruce pointed to how things had become progressively worse since his daughter's mother had re-partnered:

I'm getting more and more concerned now about Sadie being upset and not wanting to go [when her mother comes to pick her up on Sundays]. I have concerns about her [mother's] new partner. ... Sadie's said to me, 'Gareth told me that you don't love me anymore and he loves me more' and I was concerned about that and I confronted Alison over it [who responded by saying 'Well if you're having a go at Gareth, you're having a go at me as well']. And Sadie's also said, when we were on holiday, 'Gareth said that you're not going to be my daddy any more, he is'. It is, to me, what a stupid thing to do, what a stupid thing to say. ... Sadie and I have a very close relationship, we're a brilliant team, she always say's 'Oh we're the best team', and he's trying to stir things up, you know, and it's upsetting Sadie.

Colin explained how his 7-year-old son Toby had taken a great dislike to his ex-wife's new partner.

I think Toby had been involved in days out with the both of them over a period of time sort of going back, before I was even aware, you know, it took her a year to tell me about this thing, so I think he was aware that there was something going on

and actually he didn't like it very much. Well, he could smell a rat basically, and then she was there with this guy in a house that was actually physically very similar to the one we were living in, so he's then taken off and said, you know, 'This is your home now. This is your room. Here are your things'. And he's sort of looking at it and thinking, 'This is all very familiar except you pal!'. He has consistently said ever since that he doesn't like this guy.

Of more concern to Colin was when he discovered that his son had been taking baths with the mother's new partner, Alan:

Toby came round one day and he said, 'Alan got into bath with me'. Leah's partner! And I said like 'What!' and I didn't want to go into too much detail, and then he said it again about two weeks later, and so by that time I was like, I don't like the smell of this at all, so I wrote a letter to her solicitor, got no reply.

**Q: You didn't think of approaching Leah?**

I did, and she was very sort of, 'So what?' about it. [...] I think she was quite happy about it and she said, 'So what's unnatural about that?' and I think I said something along the lines of, 'Well if you can't see then we've got a problem'. Umm, so yes, I wrote a letter to the solicitor and they replied. About a week later I wrote another letter and then they eventually wrote back and said, we no longer represent Leah.

For Jim, a racist comment by the children's mother's new partner was something he felt he could not ignore:

I think it was a racist comment that he'd made and the kids found it quite weird that he'd said it, and I found it quite upsetting that he'd said it, and so I did make that phone call! And I said to Nicky, 'Look! This has come out of the kids, an' em, can you make sure it doesn't happen again, or can you explain ... what do you think? Do you think it's real or do you...?' And we did talk it out, we communicate and you know, ... and then she has to deal with that, because I think for both of us, our main priority is still to the children.

Jim concedes that it may not only be difficult for the children but for his ex-wife's new partner as well, who is trying to carve out a role for himself:

It was difficult at first, when her partner moved in, and the kids found that quite difficult to adjust to. [...] but obviously he's trying to find a role as well! They haven't had any more kids, so em, he's basically, you know, the days they're there, he's trying to, sort of like, parent my kids as well, which is quite difficult for them because they've [already] got a very strong dad role.

As children increasingly maintain strong links with both their biological parents following parental separation, the role of social parenthood has changed markedly. In light of these changes, the lack of cultural scripts for step-parents and partners to guide behaviour has inevitably left social parenthood more uncertain.

### **Wider support and significant others**

Fathers in both samples reported on the support they received, which came in a variety of guises, from new partners to grandparents (both paternal and maternal), from friends to self-help groups. Some even found support in the school playground. For Colin, emotional and indeed practical support came mainly from other parents at his son's school:

A lot of the other parents have been quite partisan. ... They recognise that it's quite natural somehow if you split up, it's the fact that they didn't see Leah for a year and a half and then suddenly she seems to be popping up a lot and they're kind of aware that I've had to make space for her to do that.

Colin, who was representing himself in court, explained that one father even came with him to court for moral support and that this friend had been one of several parents who had offered to come.

Kyle described how, after he and Freya had separated, it was his lodger who had not only 'kept the wolf from the door' in terms of finances accrued through paying rent but had also been the mainstay of moral and emotional support during the five months he was there.

I had a lodger. It was an Indian guy called Raj ... a professional guy. I think the majority of support that I had was from this guy. I do owe him an awful lot. [...] I was going through such a bad time, I'd lost so much weight [...] Sometimes he'd come in and I'd be bleating my eyes out about what'd happened and he'd just be like ... 'Kyle, let's be factual about this. Roly needs you. You've got to be strong! This is the way it is, Freya's unreliable at the moment [and] Roly needs a father!' And within four or five months he managed to get me really boosted up.

Husain, explained how his sister had offered him not only emotional support but practical help by putting him in touch with a fathers' group:

My sister helped me a lot because she had studied law. She advised me on the choice of solicitor. ... and then she found this fathers' group called *SOS Papa*, and there was a meeting which I went along to, and they explained what I could do and there was a solicitor there that offered their services, and it was a really, really good solicitor.

To a certain extent, fathers' groups were always likely to be a topic of exploration in the study, given that the *raison d'être* of many of them is to promote a presumption of shared residence within the family law systems of their respective jurisdictions. In the French sample, several respondents had received assistance from two groups known as *Justice Papa* and *SOS Papa*. Didier, for example, explained how he had accessed a fathers group in search of advice:

At the time when we separated, I already started to look around a little at the law that existed because I was not up to date, and ... I went to see various societies to inform myself, to be up to date, not to be taken for a ride. And it's like that I met a lot of people ... I learnt what the law was, what procedures one had to follow, what one should do to defend oneself, euh, pensions, etc. Well I learnt like that, at first on the internet, then after I went out in the evenings to meet people, fathers who had already had this experience, who explained to me the facts of the different experiences they'd had, etc ... And also one could consult lawyers. Saturdays there was a lawyer and she gave me advice.

By contrast, few fathers in the British sample had made any contact with similar groups. In fact the British sample seemed generally dismissive of them despite being aware of

their existence. Only one British respondent, Sonhando (the only ethnic minority respondent in the British sample), was a member of a fathers' group – *Families Need Fathers* – and apart from one other British father, who claimed that if things went wrong at the next court hearing he would be tempted to look in to it, none of them had sought to access them. There were indications that this could have been due, in part, to the bad press these groups had received. However, it may also have been due in part to the nature of the way arrangements had been negotiated – in particular, whether or not parents had taken a litigious route.

Finally, grandparents, as significant others, seem to be being propelled into taking on a role of their own again within these changing family structures to some degree. In my samples, their impact on the way arrangements were managed and the support fathers received from them varied considerably. For the majority of respondents in both samples, grandparents did not live close by and therefore tended to play only a minor role in the day-to-day care of the children, occasionally taking on a more prominent role during holiday periods. However, where they were living close by they could often be instrumental in providing practical and emotional support to both the fathers and the children. Very often they were able to provide their grandchildren with an escape, or haven, from any pressures they may have been experiencing as a result of their parents' separation; as Christophe, a French father of two, revealed when he described the vital role his parents had played in the children's lives during the separation:

They adore my parents. They are [both] primary school teachers, so they've always been around children. ... my mother works with children who have problems at school, you know? Six- to ten-year-olds, with reading problems; educational problems mainly. So when the girls go round there they love it. Consequently, at the start I think it was very calming for them as well. It enabled them to think about other things, get rid of some of their worries about us, their parents. So it became a time of escape for them. That was very important.

For Husain, his parents had played a very large part in his daughter's upbringing. He described the relationship between his daughter and his own mother as being a particularly close one:

My parents live just two kilometres away. They're really close to Berenice. When [she] was born, it was my mother – so her grandmother – that looked after her. So there's a really strong tie there. The school is just next to my parents' house, so Berenice always goes to my mum's for lunch. So even when it's not my week with Berenice, I'm able to go and see her because she eats at my mum's. ... Berenice [even] says that her second mum is my mother, because she is really, really close to my parents.

In several instances, support for fathers came from their child(ren)'s maternal grandparents as well as from their own parents. Such relationships could become fraught with difficulties, however, as Bruce discovered when the good relationship he maintained with his ex-partner's parents only served to antagonise their daughter, to the extent that the threat of withdrawal of contact with his daughter became a distinct possibility if he did not stop communicating with them. He felt he had little choice but to break off all ties.

Colin's mother-in-law continued to live with him in the family home for some time after his wife had moved out and started living with her new partner. Eventually, this arrangement became too difficult to sustain given the tensions that had built up between her daughter and Colin and she moved out. Another British respondent, Thomas, also revealed that he had received regular help from the children's maternal grandmother, as she lived very close by. To some extent, it appeared that she had taken her daughter's place as the main female role model in the children's lives when their mother had left the family home and moved away from the area with her new partner. Thomas explained that the children's mother had recently moved back into the area and had started to share the care of their younger son (aged 15). The two elder children (aged 16 and 18), however, had been reluctant to spend long periods of time with her, as they still felt bitter about her decision to leave.

Grandfathers also played a central role in offering support to fathers in a childcare capacity. Stephan explained that while his two children no longer had any contact with his mother (their paternal grandmother), they were nevertheless in regular contact with their paternal grandfather and spent significant amounts of time with him, including a regular period of two weeks every summer. Stephan went on to talk about his new



partner's mother also playing a significant role in their lives, particularly with regard to childcare.

In some cases, grandparents did not appear to provide any assistance to fathers even when they were living in close proximity. One father, Hal, explained how his own mother's reluctance to become involved could be explained by her fear that the more she helped out or became involved in her grandson's life, the less likely it would be that his biological mother would take on any caring responsibility. In this instance, Hal had been the primary carer for his son for a period of over six years before a shared residence arrangement was established. For Sonhando, his children's maternal grandparents proved to be anything but helpful. Indeed, he felt that they had been instrumental in allowing a parallel parenting regime to develop by assisting their daughter in attempting to cut him out of the children's lives completely.

Where parents had become involved in new adult partnerships, multiple residence arrangements – whereby parents had to manage two or more residence arrangements in parallel for different groups of biological and/or step-children – could be commonplace. Within this context, the extent to which the often-disparate aspects of these different worlds were integrated varied significantly. There were indications that a certain amount of 'cross-over' between households could indirectly facilitate arrangements, as children could feel more positive about dividing their lives between them. However, there were other fathers who intimated that they thought their children quite relished the 'separateness' of their two worlds of which they felt they had 'ownership'. Here, it is suggested that children might be loathe to integrate their worlds too readily: perhaps any attempt to bridge them would require a certain amount of conscious decision making on the part of the children themselves were they minded to do so. For fathers (and indeed mothers), this would require a certain willingness and readiness to be open where and if this became necessary.

The point was also raised that where two families had 'come together', having different arrangements for different sets of siblings could also help to facilitate the arrangement, in the sense that the children were not constantly getting 'under each others' feet'. This could be seen as healthy and thereby work to sustain the arrangement. It was also

recognised that relationships between these groups of children had to be handled with tact and care.

Where mothers had repartnered, fathers' views on their new partners ranged from complete indifference, to enthusiasm, to deep concern. There was also a recognition that new partners may struggle in carving out a role for themselves. This is perhaps not surprising given that the role of social parenthood has changed markedly in recent decades and (biological) parental roles within these types of arrangements remain strong on each side. Where step-children had formed part of the fathers' family life, arrangements could become even more complex where issues of residence had become contested, occasionally resulting in a complete loss of contact with them. These are issues that often become obscured in debates surrounding biological parenting.

Fathers encountered different forms of support, from the school playground to friends, and from fathers' groups to new partners and grandparents. Just as care arrangements for children can affect fathers in a multitude of ways by indirectly altering the context within which they live their wider 'family life', so too can children's worlds be affected in the same manner. Through an examination of other 'significant' social actors in their lives we again see that issues of residence, and contact more generally, are not solely about the maintenance of relationships between biological parents and children, but also about childrens' other external relationships and loyalties. Shared residence can provide a means by which to facilitate the continuation of other 'significant' relationships that may be of crucial importance to the lives of children. These relationships are likely to be placed under a considerable strain where only sporadic access is afforded one parent; where little time can be given over to maintaining the many and varied relationships that make up such an important part of their lives.

There are clear challenges here for law, policy and practice in respect of 'significant' others. Shared residence not only appears to enable both parents to play a fully integrated role in their children's lives but also provides a means by which 'other' important relationships are allowed to continue and flourish. These relationships and the nature of other types of contact that attach themselves relative to a post-separation 'residence' status can often be neglected within the narrower confines of discussions around fathers' rights activism. Though not reflected directly within the fathers'

accounts, the ties that grandparents and ‘third parties’ such as step-parents have with children are increasingly gaining recognition within both French and British family law jurisdictions (see Ch. 3). Nevertheless, despite recent legislative changes, the wider social recognition afforded grandparents and their relationships with children remains to some extent in its infancy.

## **Summary**

The fathers’ narratives reveal that shared residence arrangements may often take place outwith the ‘bi-nuclear family’ context of father, mother and biological offspring, making arrangements multifarious and complex. In attempting to understand what helps and what hinders fathers in the development and management of these arrangements, proper consideration must be afforded the manifold ways in which recomposed and/or extended families and wider kin or friendship networks impact on the lives of the various social actors involved. Without such consideration, we run the risk of producing a one-dimensional account of family life that does not fully reflect its lived reality, and thereby negate the central role that ‘other’ actors can play in both the provision of care and practical and emotional support.

That said, within the context of family recomposition, the fact that so many fathers spoke of the importance of giving each set of genetic siblings their own time and space to establish and nurture their own unique identities within their now wider family units, indicates the importance fathers still attached to a sense of maintaining certain core identities while simultaneously adjusting to their ‘new’ familial environments. In so doing, it was felt that this could provide a means by which to facilitate a model of family life in which children were alternating their residence where other familial dynamics were at play.

By gaining a deeper understanding of the relational dynamics that exist in the negotiation and management of shared residence, namely, how and in what ways the different social actors relate to each other as parents, children, friends and wider family, we are now better placed to approach the following two chapters that explore fathers’

experiences of negotiating their way through some of the more structural processes and mechanisms surrounding shared residence. In particular, we have a clearer start in terms of better understanding the options that are made available and the choices that are taken, to and by parents, relative to the legal frameworks and social policies in which they operate.

## **Chapter 8**

### **The structural dimension: in the shadow of family law**

#### **Introduction**

This chapter explores the evolution of arrangements that respondents became involved in relative to the various litigious, privately ordered and/or conciliatory approaches parents might adopt when seeking to establish residence and contact arrangements for their children in the wake of parental separation. While it is important to recognise that elements of each approach may at times overlap, they will nevertheless typically follow different trajectories. As such, fathers can be divided loosely into two groups depending on which approach has been adopted: first, those who have been able to negotiate arrangements between themselves and their former partner without recourse to external systems or agencies; and secondly, those that have instructed lawyers or sought, or been subject to, family court proceedings.

A third, ‘conciliatory’ approach, exemplified in the process of family mediation, can also be identified. However, while potentially unique as a dispute resolution option, it is more commonly allied to either one or other of the above groupings; typically, private mediation alongside private ordering, and public (or publicly funded) mediation to more court-based approaches. Despite these associations, given that several fathers were involved, at some point, in forms of alternative dispute resolution, a separate section within the chapter dedicated to the mediation process is warranted rather than appearing as an appendage to the two main groupings. The chapter is divided, therefore, into three parts: first, private ordering; secondly, legal proceedings; and thirdly, family mediation and conciliation processes. Each focuses on fathers’ experiences of these three key processes and how they have impacted on the development of arrangements.

Table 7.1 outlines the numbers of British and French fathers involved in each of the three named approaches. Despite the somewhat porous nature of these divisions and the potential for some overlap – if not sequential adoption – in approach, respondents are classified relative to the process that has led directly to their current care arrangements;

namely, ‘private ordering’ or ‘legal proceedings’. For several respondents, an often-lengthy period of time ensued between an initial decision to separate and the consequent legal dispute over residence. In this sense, private ordering had often been a precursor to taking a more litigious approach. It is equally important to bear in mind that once a legal dispute over care arrangements has been settled, the pattern of care may again change without the need to go back to court. As such, an initial dispute in the family courts may pave the way to more amicable changes in care arrangements at some later date. Finally, respondents involved in forms of mediation or counselling spanned both the legal proceedings and private ordering groupings. In the British sample, three out of the four mediation cases were linked to legal proceedings, while in the French sample, two out of the three cases were linked with private ordering. The numbers are so small that it would be impossible to gauge any strength of association between participation in forms of alternative dispute resolution and each respective litigious or privately ordered approach among the two sample groups.

**Table 7.1** Total numbers of fathers involved in each process with regard to residence and contact issues

<i>Process/approach</i>	<i>N° of British fathers</i>		<i>N° of French fathers</i>	
	<i>Married</i>	<i>Unmarried</i>	<i>Married</i>	<i>Unmarried</i>
Private Ordering	9	6	3	5
Legal Proceedings	5	–	1	6
Total N=	n=20		n=15	
Mediation <sup>a</sup>	3	1	–	3

*Note:* <sup>a</sup> Respondents involved in forms of mediation (and/or counselling) spanned both the legal proceedings and private ordering groupings.

Crucially, Table 7.1 only indicates the total numbers of fathers involved in each process relative to residence and contact, and not in respect of divorce proceedings and/or financial issues. It should also be noted that each process has not been broken down into subgroups reflecting the often-diverse nature of each process. For example, those respondents following a more litigious approach have not all ended up with a court order; some have represented themselves in court (either all or some of the time); some cases have involved the use of welfare agencies – occasionally requiring a court welfare report or the French equivalent (une *enquête sociale*) – while others have not; there have

also been cases where mothers have instigated court action as opposed to the father. Equally, those respondents following a mediated route may have done so voluntarily or with a measure of compulsion where the mediation has been court-based and publicly funded. For example, although attendance at mediation itself is not compulsory in England and Wales, since 1998 couples who wish to apply for Legal Aid for representation must nevertheless attend an initial meeting with a mediator to discuss whether or not mediation might be a suitable option. The diverse nature of each process is instead reflected within fathers' accounts.

In addition to the highlighting of the numbers of fathers relative to each process and sample group (i.e. British or French), they also appear relative to their marital status, as this could potentially have a considerable bearing on the way parents approach negotiations. Finally, where respondents have consulted a lawyer regarding contact issues, have had a legal agreement drawn up and/or been obliged to provide details of their arrangement to the Family Court or *Juge* – as is often the case in France – and yet have not become involved in a legal dispute over the children, they appear under the heading 'private ordering' rather than 'legal proceedings'.

## **Private ordering**

This section explores fathers' experiences of making private arrangements for the care and residence of their children without embarking upon a legal dispute involving lawyers or the family courts. By far the largest group within the British sample (15 out of 20) and making up just over half of all French respondents (8 out of 15), it looks at, and seeks to understand, the reasons fathers themselves give as to how they came to adopt such an approach and why. It uncovers the underlying factors that have impacted on decision making and reveals the extent to which fathers were satisfied not only with the process but also with the outcome. In so doing, comparative differences in experience between the sample groups are brought to the fore. The section begins by exploring the underlying factors impacting on decision making.

### **An ability to agree over care arrangements**

While there is no indication in the data that the expectations of fathers differed relative to the approach they became involved in, it is still worth pointing out here, in relation to private ordering, that there was an expectation on the part of all fathers that they would continue to play a central role in their children's lives. It was unthinkable to them that an arrangement would be made in which they would not play a full, active and equal role in the day-to-day care of their children. These expectations were important since they fed into the way arrangements proceeded. A sense of balance and equality underpinned discussions of these expectations, as Stephan, a French father of two, aged 3 and 1 at the time of their parent's separation, reveals:<sup>22</sup>

It was important that we were going to see our children in a balanced and equal way. It was impossible for me to think that I was going to see my children only one weekend in two, but in the same way it was impossible to think that their mother would only see the children one weekend in two. And I would never have said, 'listen, I want to have them the whole time', I wouldn't want that, it was just unthinkable, and she also said that it was really important that the children saw me as much as they did her. ... I wouldn't even wish to be with them all the time, because I know it wouldn't be balanced for them.

As Stephan indicates, for shared residence arrangements to be negotiated privately among parents, the expectations of these fathers would generally have to be matched by, if not an equal enthusiasm, at the very least a mutual respect for their parental role by the children's mothers. Occasionally, as Daniel, a British respondent of two, aged 9 and 7 reveals, this could be described as over-enthusiasm:

Well, Kay just demanded it [shared residence]! I wouldn't ever take the boys away. She just wanted me to have them as much as I possibly could have them and she wanted it to be 50/50.

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<sup>22</sup> In contrast to the way respondent characteristics have been set out in the previous chapter, the number of children fathers have, together with their ages – either current or at the time of their parent's separation – appears next to the name of the respondent in question throughout this chapter. I have done this principally in order to highlight the very young ages of the children. It also enables us to gauge whether any potential link exists between the process parents have adopted and the age of the child.



An appreciation of, and mutual respect for, each other's parental role is key to understanding many privately ordered arrangements and the dynamics and evolution of joint parenting across households more generally. This appreciation meant that arrangements could often be discussed more dispassionately than might have otherwise been the case and negotiated between themselves in a way that put their children's interests before their own. This is highlighted in Jim's account, a British respondent of two, aged 9 and 4 at the time of their parent's separation:

The good thing is that we do respect each other's wishes with the kids, and the kids have always, always come first. ... I don't think either of us [wanted to be apart from the kids for too long] really. [Shared residence] was just the fairest way we could possibly do it.

Richard, whose two children were aged 8 and 6 at the time of their parent's separation, explained that there were two underlying factors that had made shared residence possible in his case and had helped to sustain it:

Like me, Kit absolutely loves the kids and respects the role the other person plays and recognises the role as vital. And so if you can just put aside your personal differences and work and see that, then you can reach real agreements that work for the kids. And the second thing that I think was in the back of Kit's mind was that I demonstrated through my conduct and the willingness to leave the family home and let [her new partner] move in, that I would bend a long, long, long, long way to try and accommodate her and her needs and the children's.

This flexibility had a limit however, as Richard went on to explain:

But I made it quite clear to her from the start that there was a huge lead in of flexibility on my part but there was a line in the sand, and if she ever crossed that line in the sand I wouldn't hesitate to throw hell and earth. If she had abused her position as their mother and sought to alienate me, she knew that the principle was so important to me that I would spend the last penny that I had fighting in the courts, and I would have made it a very bloody battle indeed.

What separated many of these fathers and their ex-partners from those that took a more litigious approach appeared to be an ability to agree about care arrangements. And not just the act of caring itself but the degree to which it should take place. What might constitute ‘alienation’ to one parent may vary considerably from the interpretation placed upon it by another, or indeed by third parties, extending beyond an ability to solely maintain contact with their children. For Richard, as with the majority of respondents, a model of care in which they were not fully integrated into the daily lives of their children represented a model of contact so poor, that in their minds, it equated to the same thing; namely, alienation.

As we will see in the section of this chapter that goes on to discuss fathers’ experiences of litigious approaches, those respondents that instructed lawyers or ended up in court, in the main felt compelled to fight for what they considered to be fully integrated relationships with their children. In light of this attitude, it is probably more appropriate to talk in terms of fathers fighting to retain their ‘family life’, as for them the issue extends beyond one simply of contact. As was pointed out in Chapter 6, it may be more helpful to begin thinking about and discussing post-separation contact in these terms. When parents separate, care arrangements not only reflect the bonds between parents and children but reflect the maintenance, or otherwise, of family life for both parents, albeit in the absence of their former partners. Shared residence was seen by respondents as not only affording each parent the continuation of their family life but the family life of their children with each parent.

### **A desire to avoid confrontation**

While the ability of couples to reach privately ordered agreements could be said to rest primarily upon a mutual respect for each other’s parental role, other more pragmatic reasons were also evident among respondents, including the desire to avoid confrontation and conflict. Arrangements that had been privately ordered did not always mean that they had been worked out amicably or, indeed, that they had been in any way ‘negotiated’, as Bruce, a British respondent of a daughter aged 2 at the time of her parent’s separation, highlights:

She turned round and said, you know, ‘I’m off!’ And everything was on her terms. You know, she said, ‘look, this is it, you can see Sadie the weekends and that’s

that.’ I didn’t want Sadie to go at all. There was no discussion. ‘This is what’s going to happen, you will see her the weekends and weekends only,’ and as far as I was told there was nothing I could do about it.

As Bruce had been unmarried and his daughter had been born before the legislative changes of December 2003 – the date after which all unmarried fathers in England and Wales who jointly sign the birth certificate of their children became entitled to automatic parental responsibility – Bruce did not have the same legal rights as a married father in respect of his daughter. Although he would have liked a different outcome in the form of more contact and involvement during the week, he felt unable to ‘rock the boat’ given what he considered to be his precarious position stemming from a lack of parental responsibility. Furthermore, he felt that asking his ex-partner to allow him to apply for it would only antagonise her and place himself in an even more vulnerable position as far as contact was concerned.

While much is made of the fact that only 10 percent of separating couples with children currently have their contact arrangements ordered by the courts in the British context (DCA, DfES & DTI, 2004), fathers’ narratives are likely to hold wider purchase here by signalling that a proportion of the remaining 90 percent are likely to be party to arrangements that have not been worked out amicably or satisfactorily for all parties, if indeed a genuine arrangement has been worked out at all. While many might have reached amicable agreements that avoid the need to go to court, others might have been made under a certain amount of duress, principally in order to avoid the type of confrontation fathers discuss here. In the main, accounts centred around appeasing the other parent in order to lessen any adverse impact on the children or, equally, avoid ending up in a worse position relative to the contact they did have. This issue is followed up in the section of this chapter dealing with parental responsibility.

There was certainly a general feeling among many fathers that, whether or not they had played an equal part in the care and upbringing of the children or, indeed, been the primary carer, parental separation had left them with a sense of becoming a ‘second-class’ parent. There was a general feeling that mothers were able to act arbitrarily and that their own relationships with their children were now somewhat dependent on the mother’s goodwill. Since this type of sentiment is more strongly associated with the

accounts of non-resident fathers who have very little, if any, contact with their non-resident children, it was somewhat surprising to find these feelings echoed so strongly among a significant proportion of fathers with shared residence. Sonhando, whose children, now aged 4 and 3, were only 18 months and 6 months respectively when the separation began, gives us an insight into how some fathers experience this sense of becoming sidelined as a (joint) principal carer:

I think the real problem, once we'd established this weekend contact was ... trying to get my ex-wife to accept that my role with the children was a significant one and that I had as much right to see them and to have a say in their lives [as she did]. Because I'd become very much just a sort of ancillary fixture, you know, a sort of nuisance that had to be borne.

Sonhando, who initially sought a private agreement with his sons' mother but later felt compelled to go to court, provides a good case-in-point. He highlights the fact that despite the very young ages of the children prior to separation, he nevertheless saw himself as a (joint) principal carer and described how he had been very much an equal partner in their care from when they were born. There is a tendency to think that a father's involvement with their infant's care begins at some undetermined period well after their birth. Sonhando reminds us that not only can father–infant care begin from the moment of birth, but also that this level of involvement can no longer be seen purely as a means of supporting the mother in her relationship with the child. Instead, it represents the bonding of father and child that can act to strengthen their own relationship throughout life.

Jim also highlighted how these feelings of becoming *the second parent* were borne out when attempting to discover what legal rights he had in relation to his children:

When I very first split, I went to see a solicitor, yer? ... It was almost like, because I was the dad I wasn't important really, d'y'know what I mean? And that was very frustrating ... I was just, you know, it was white washed, that was it! You know, 'They're better off with their mum because they're young children', and that! I found that quite [difficult], you know?

### **‘Being there’ and long-term strategies**

The desire to avoid confrontation led to some fathers having to adopt long-term strategies for establishing shared residence. Several fathers who were unhappy with contact arrangements as they stood and did not, or felt they could not, seek recourse through legal means instead felt that ‘plugging away’ and always ‘being available’ was perhaps a better long-term approach. To speak of a ‘long-term’ commitment to shared residence is not to suggest that other fathers might lack the same commitment, instead it refers to a very particular and conscious long-term strategy whereby fathers accept current arrangements as they stand in the hope that they will improve over time. In particular, by ‘plugging away’ and as much as possible always being available for the children when needed.

Being available often became a crucial factor in the way arrangements developed. Where the nature of the other parent’s ‘lifestyle’ could be somewhat erratic and unpredictable this became even more important. As David, a British respondent of three children aged 12, 9 and 6 explained, given the lifestyle his ex-wife was leading following the break-up, ‘being there’ to have the children whenever she needed him to meant that his ex-wife became more and more reliant on him to look after the children:

It was never really agreed on that this [shared residence] is what we’ll do. It went that way because of the life she was leading and because I was always there, saying ‘I’ll have them! I’ll have them!’ And I’d take every opportunity that I could. And there were times when you’d have them five nights, six nights a week, if that’s the way that it sort of panned out, and then it became more formal when she stopped going out so much and leading that life.

Simon, a British father of two, aged 5 and 4 when their parents separated, explained that even though he had the children half the time – operating an alternate-weeks arrangement – he still had to make himself available when his ex-wife and her new partner were unable to have the children for whatever reason:

Even though it was 50 percent, they were so wrapped up in their own world that I got a lot of calls. I’d be at work when I shouldn’t be with them, ‘Oh, can you ... ?’; ‘Oh, we’ve got something on’; ‘We’re in town’; ‘We’re stuck. Can you go and pick

them up?’ ... Because all I wanted was to see the children anyway, I’d just throw me tools down and go and get them, you know, and er, I was getting more and more [time with them]. Then Ros typically did draw into um, another state of depression and various other things and so, there was one phase [when I was having them all the time].

The extent to which mothers would rely on fathers, sometimes for extended periods, appears to have been a strong contributing factor in the development of shared residence and/or in sustaining it. While there was no sense among respondents that they themselves relied upon the mothers to anything like the same extent, a certain amount of flexibility in arrangements was nevertheless commonplace. However, this *flexibility* cannot be equated with *reliance* and tended to be based upon more reciprocal arrangements.

### **Using the other parent as the first port of call**

It appeared that several mothers were willing to allow the father ‘extra’ time with the children when there was no alternative, but would use grandparents or outside childcare facilities in the first instance, as Sonhando went on to explain:

She might suddenly become ‘ill’ and her parents wouldn’t be around to help her; because she relied on them for huge amounts of support. ... She knew that she had that support and that back up which meant that she didn’t have to rely on me. When she was ill and there wasn’t anybody else to rely on she would then call me up and present it as ‘I’m being generous, you can come and see the children’. And, you know, I would have to drop whatever I was doing, with no notice, and, work, whatever it is, drive across the country ... pick the children up, and it was only because she couldn’t handle them, you know, they’d become too much.

Not using the other parent as the first port of call for childcare proved to be a bone of contention among some fathers. Several spoke of their desire to look after their children themselves when the children’s mother was unable to, preferring this to seeing them, in one father’s words, ‘palmed off’ on to somebody else. Bruce, spoke of how he found the whole idea of childcare for his 4-year-old daughter, outside of the family, anathema.

I do think parents should look after the child ... if Alison has to work to get the money it'll mean a nanny or something like that. That's my worst nightmare, I'd hate that ... I wouldn't know the person looking after her. I wouldn't know the situation, you know, and I'm very uncomfortable with somebody [else]. I suppose I want a protective parent, you know, and that's it.

Another British respondent, Burt, could not understand why his ex-partner Liz insisted on putting his two daughters, aged 10 and 8, into an after-school club on a weekday rather than allowing them to spend the time with him. Not only was he available but he also maintained that his daughters did not particularly like the after school club in question and had made these feelings known.

One respondent, Colin, even wanted to stipulate in the agreement he arrived at with his ex-wife for their 7-year-old son Toby (see further the section below on legal proceedings), that each parent would be the first port of call if the other parent could not look after their son personally. Indeed, the parenting arrangement was largely based around who could look after Toby and when:

We thrashed out this seven-days-over-fourteen thing, which was largely based on, or working around, her timetable for teaching, which was very obvious to get at because it was on a website. You know, she was saying 'I've got to have him on this day and this day', and I was saying, 'Well you know, you want him on Thursday evening when you're teaching, how does that work? That means somebody else is actually looking after him'.

In the event, Colin accepted that this could not happen if he was not to end up forcing his son into a conflict of loyalties, as his ex-wife's new partner would inevitably become more involved in his care during the time Toby was with them. This was something Colin felt he would have to work hard to accept. It was put to him that it would be unreasonable to expect, for example, that his ex-wife's new boyfriend would be restricted from attending events at Toby's school. Even though Colin had been the primary carer and was heavily involved in Toby's school life – for example, acting as a class representative, attending many of the school trips, and so on – he now had to

accept, as part of a final agreement, his ex-wife's stipulation that he could no longer be involved in Toby's school life if this fell on the days Toby was with her.

### **The experiences and advice of others**

The experiences and advice of others who had been through, or were going through, legal channels could often be enough to put many off the idea of attempting to resolve their disputes in court. The extreme problems experienced by David's new partner and her ex-husband over residence issues certainly influenced the way David and his ex-wife Jacqui proceeded with their own arrangements:

In a bizarre way it benefited Jacqui and I because we would look at what was going on in relation to [my new wife's ex-husband] and the mess and you'd think, 'Oh god! We don't want to get into that situation!'

Making private arrangements could also stem from a desire to avoid excessive legal costs. Although Colin 'reluctantly' became involved in a legal dispute over residence, he nevertheless offers a good example of how legal fees can also become a major consideration. He was advised by a family member who worked for a law firm not to get them involved, as much as anything for reasons of cost:

I talked to a lawyer who's connected, [a member of my family is] a lawyer. He put me on to the Family lawyer in their practice, whose advice was, 'Keep us out of it! And be aware that if you get us involved it will cost you thousands'. [...] There's one other father who I talk to a lot, who went through the whole court thing. He and his wife had to spend about 18 Grand fighting each other; the profit from the house they'd sold when they split up and he basically ended up losing. [...] 'Well', he said, 'yer, the chances are you're going to get stuffed, so why spend what money you haven't got getting stuffed'.

However, while there was some indication that a desire to avoid excessive legal costs played a part in some fathers' thinking, this aspect was by no means at the forefront of their reasoning in avoiding a legal dispute. It is, of course, important to remember that some couples who had come to an agreement about residence between themselves nevertheless used solicitors to organise their financial affairs. This was particularly the



case where respondents had been married and a solicitor had become part of the divorce process. Several fathers also related how not going to court or involving a solicitor, principally in relation to the divorce itself, had meant that costs had been kept to a minimum, as Jim highlights:

We didn't go to court at all, no! We spoke to a financial advisor, who's a friend of the family, and we literally all sat down with a cup of coffee, worked out the sort of money side of it and how we were going to do that, worked out the kids between us, and then it would be just waiting. I think it was a period of two years and I think it was just £50 quid or something. You write to the court and got it done and we've got our divorce.

### **Seeking initial advice**

Among respondents there were those who, despite avoiding a legal dispute, had nevertheless sought out legal advice in the initial stages of separation. This advice could to some extent account for certain respondents resisting the temptation to go to court, as Jim revealed:

The most frightening part for me was when it was going to happen and before we'd actually sat down and sorted out the kids, um, I thought I'd better go and get some legal advice. [I felt] very vulnerable at that time, and I remember going in and, you know, I felt that everything was being taken away and I didn't have any, as a father, any rights or any choice. I remember sitting down and talking to a solicitor, and the advice she told me was that they are young children and the law states that young children are best off with their mum, which didn't help me at all, because basically I'd always felt I was more like the paternal ... and maternal role, because she was very career orientated, you know? ... The only way I could do it was sort of not rock the boat and try and get my head round this is going to happen!

This idea that younger children are best off with their mother – the so-called 'tender years doctrine' – was a theme that fathers returned to repeatedly. Respondents' perceptions were that this doctrine was, to a large extent, entrenched within the legal system and permeated the attitudes of professionals working within the child welfare sector. Even in France, despite the option of shared residence having become available for separating couples since 2002, several fathers spoke of how there had been talk of

restricting this option to those separating families where children were over 6-years-of-age. As we can see, solely from the fathers whose accounts have been referred to in this short section, many more respondents' children were under the age of 6 than over it when their parents separated. This highlights a disparity in what parents consider an appropriate age for children to be alternating their residence and fathers' perceptions of how third parties might view such arrangements.

For fathers in the French sample who had been married, seeking out legal advice where parents had agreed care patterns had generally been done in conjunction with their ex-partner. Valentine explained how, despite he and his ex-partner having made arrangements for their two children (aged 14 and 9 when they separated) between themselves, it was still necessary to go through a legal process of sorts, to get it formalised:

We discussed what we were going to do and then went to see a lawyer who wrote down in black and white what we wanted and the lawyer filled in the divorce papers. ... [So at the start] there was a lawyer, after that a *notaire* [solicitor] for the house, and then the judge. ... There were two meetings with the judge; the first to say what we wanted to do and the second to finalise it all.

Claude, A French father of two, now aged 11 and 7 but aged three and one at the time of their parent's separation explained that when he separated, since he was not married it had not been necessary to involve the courts. Despite having to submit a paper to the *juge des affaires familiales* (judge hearing family cases), it was not necessary to go to court. Nevertheless, given Claude's feelings of vulnerability, he also expressed his desire for something official, that legitimised his status as a full and equal parent. Because of this, despite having a private agreement they nevertheless went to court to have their agreement sanctioned 'officially':

So long as there are no difficulties between the parents and the children, there's no need to go to court. I wanted to all the same, to have official papers – something official to show. Because so many things could happen, the women sometimes might want to go off to Africa for example and take the children.

In a more general way, fathers' understanding of the legal process tended to be quite poor. Many felt unsure of their rights and had little knowledge of the legal process. While this unfamiliarity could have led to some respondents rushing into a legal dispute over the children where they were unhappy with arrangements, it instead appears to have impacted in some measure on fathers' reluctance to determine arrangements through legal channels and thereby err on the side of caution. In some instances this could be put down to the 'horror stories' certain respondents were aware of through friends and/or family. Richard, described how he felt unsure of how the legal system would influence the development of arrangements:

I felt a little bit vulnerable to start with, not because I didn't trust Kit, but simply because I'd never been divorced, and so I didn't know whether or not, against even her will the legal system might draw the children towards her and away from me. I've subsequently come to realise that, basically, the legal system isn't interested in intervening if the parents can agree between themselves. So therefore the imperative has to be for the parents to get their asses into gear and reach an agreement between themselves, because if they can't, they'll end up communicating through solicitors and spending, wasting their time and their money and the children's futures.

This unfamiliarity, or distance, between family life and its legal regulation is to some extent witnessed in the numbers of fathers in the British sample lacking official parental responsibility for their children. Certainly few of these respondents had fully understood the consequences of not having parental responsibility until after they had separated from their partners.

### **Being married or unmarried: a lack of parental responsibility**

A father's marital status could impact greatly on their ability to influence negotiations. In particular, a lack of parental responsibility in the British context could leave fathers, and potentially their children, in a vulnerable position. As highlighted earlier in this section, a non-married status had left Bruce without the automatic right to parental responsibility enjoyed by married fathers. He felt this impacted on his ability to express certain concerns he held over his daughter's welfare (principally in relation to the

mother's new partner) to any third parties, as this could risk alienating his daughter's mother to the point where she would deny him any contact at all.

Andy, at the age of 26 the youngest father in either sample, also expressed deep concerns over his six-year-old son's welfare. Since he lacked parental responsibility, Andy was unsure how he could approach Social Services with his concerns, without alienating the mother and consequently risking being denied access to his son completely, thereby putting him in even greater jeopardy. Andy was aware that his son was already on the child protection register in connection with his mother and her new partner and ideally he would have liked 'custody'. However, he felt that his position as a young unmarried father had left him somewhat 'outside the loop' and that the best he could do for his son was to continue monitoring the situation. This need to tread a fine line between allowing an unsatisfactory arrangement to continue and risk losing contact altogether presented a genuine dilemma for Andy; it was undoubtedly the cause of a certain amount of consternation among other fathers lacking parental responsibility.

Finally, it is worth mentioning the case of Hal and his son Gavin who, aged 3 when his parents separated, is now 13. Hal took on the primary care-giving role for his son when his ex-partner Jodie left the family home; indeed, he became the sole carer for a period of more than six years. He and Jodie began sharing the residence of Gavin two years after this. Hal is still the resident parent for the purposes of childcare recognition, even though for the past two years Gavin has begun to move between his parents' homes in roughly equal measure. What is of interest here, is that Hal has never held 'official' parental responsibility for his son, and therefore, in theory, has been disenfranchised from the right to carry out the day-to-day decisions around questions of health, education, or the claiming of certain benefits (for further discussion see Ch. 9), which he has *de facto* been making for the past ten years.

The marital status of fathers in the French sample did not reveal any distinct problems in respect of the way parents proceeded with arrangements. Automatic parental responsibility (*l'autorité parentale*) for unmarried fathers has been available in the French context since 1993. Introduced ostensibly in order to equalise the rights of French children across the board regardless of their parents' *filiation* (or marital status), it arguably has also acted to strengthen perceptions of parental equality more generally

within French society. Where the issue of *l'autorité parentale* arose and was discussed in a cross-national context during the interviews, French respondents appeared genuinely shocked to discover that fathers in England and Wales had only gained this right since the end of 2003; in addition, that this right only pertained to those fathers who jointly signed the birth certificate.

Cross-national differences have been marked in this regard and the British respondents have drawn out some of the potential hazards associated with delimiting this right by marital status. In June 2007, a consultation paper was presented to Parliament setting out a new legislative requirement for the joint registration of births, making joint registration the default position. The Secretary of State for Work and Pensions, John Hutton, claimed that: 'these proposals offer the opportunity to embed a new culture in our society which places much more equal weight on the relationship of both parents with their children' (DWP, 2007: 2).

We have now read about several fathers who would like to have more contact, but in the main these are fathers with weekend residence who wish to become involved in their children's care during the school week. We have also heard the concerns expressed by those respondents lacking official parental responsibility, in the main due to concerns over their child's welfare. However, these cases apart, how satisfied were fathers with both the process and outcomes of privately ordered arrangements more generally?

### **The extent to which fathers were satisfied with arrangements**

When the fathers talked about their satisfaction with arrangements, they invariably spoke in terms of the detail in arrangements that they felt could be improved on; for example, the day on which the children moved between households, or being able to spend an extra night with their children during the week, and so on. However, whatever the arrangements, the key message – that the children should be able to be with both parents – was reiterated. On this score, parents were clearly satisfied with having made arrangements privately and satisfied with the outcome. Even those who expressed concerns about the care the other parent provided still felt it was important that their children spent time with both parents.

Jim provides a good example of how the initial fears and insecurities of separation can cause some parents to take on sole residence without considering shared residence as a viable option. Jim would have liked sole custody initially. He conceded that the destructive nature of the relationship breakdown led to an instinctive desire to cling to the children; for him these were, after all, secure relationships in an increasingly insecure environment. However, advised by a solicitor that despite having been the primary carer he stood little chance of becoming the resident parent due to the young ages of the children, aged 9 and 4 at the time, he did as little as possible to rock the boat. Having gone on to establish a shared residence arrangement with his ex-wife between themselves, he now feels that this was the best of all possible outcomes and that it was his initial fears and insecurities that led him to want ‘sole custody’ at first:

I would have liked, honestly, sole custody originally. Em, and then we thought well that’s not fair, that’s one sided, so we need to sit down. I’m glad now [it didn’t end up that way]. At the start, I would have clung on to it I think because of, you know, the breakup and everything else, and it felt quite destructive. I think I wanted to sort of hold on to the kids ... you know? But now, definitely, it has sort of, you know, worked really well.

Jim’s narrative is important, since it reveals that if Jim had felt that, as primary carer, he had had the same rights as he was being advised that their mother would have, he may have sought, in the initial period after breakdown to establish himself as the ‘resident’ parent; after all, this had been his *de facto* role. However, by not having an automatic right to do that he was instead forced to compromise and accept the other parent’s full involvement, which he now concedes has been the best possible outcome.

Indeed, what characterises the majority of respondents is their overwhelming subscription to such arrangements as being the best of all possible outcomes for their children, themselves and for other family members, in terms of maintaining wider social and family networks on both sides of the children’s families. Where conflict did arise, this generally revolved around the *level* of contact; but underlying fathers’ narratives was a clear sense that shared residence provided a real answer to the problem of parental separation. However, where parents could not agree about care arrangements between themselves the need could arise to enter into legal proceedings.

## **Legal proceedings**

This section explores fathers' experiences of becoming involved with outside systems and agencies at some stage in the establishment of residence and contact arrangements for their children where such arrangements had become a point of dispute. This would generally take the form of legal advice from a lawyer, at least in the initial stages. At the outset, it is important to bear in mind that any legal process as such did not always culminate in court proceedings. In some instances within the samples, interventions by lawyers on behalf of their clients led to an agreed outcome; while in others, representatives of welfare agencies suggested that arrangements continue as they had been without the need for any – or further – court proceedings. Nevertheless, where parties were unable to reach an agreement, a court would impose a solution on the parties in the form of a court order.

As I indicated earlier in this chapter, it is important to distinguish those fathers who have followed a legal route in relation to issues of residence from those who have followed some form of legal process for resolving issues of finance and/or divorce. It is also important to bear in mind that while, for the purposes of this study, issues about where the children are to live are generally discussed separately from those of divorce proceedings and/or financial issues, the two are nevertheless often intimately linked. Indeed, the connection between cash and care is well established, with each potentially being used as leverage within negotiations.

Finally, in a similar manner to couples that had negotiated arrangements between themselves, fathers who were involved in some form of legal process also had very clear expectations that they would be centrally involved in the care and upbringing of their children post separation. Indeed, it is worth pointing out that no differences were found among fathers' levels of involvement in the day-to-day care of the children prior to separation and the approach subsequently adopted in determining questions of residency (i.e. private ordering or following a legal route). On the contrary, what tended to characterise fathers in the French and British samples across the board were their high levels of involvement in the children's day-to-day care prior to the parental separation.

### **The parental relationship**

As indicated earlier in Chapter 7, the nature of the parental relationship is key to understanding the dynamics and evolution of parenting across households. This also holds true in relation to the manner in which contact and residence disputes were resolved. Before we enter into a discussion of the legal proceedings that fathers become engaged in, it is first important to understand why fathers had taken a legal route. If lawyers had been the first or last port of call, what were the reasons that fathers gave as to why they felt compelled to establish arrangements in this manner?

These issues have largely been explored in fathers' accounts of avoiding a legal dispute and, to this end, are only reinforced here. As Richard indicated in the above section on private ordering, there existed a 'line in the sand' in relation to his ability to remain centrally involved in his children's lives that, if crossed, would leave him with no alternative but to take court action. For those fathers who became embroiled in a legal dispute, this line had invariably been crossed in their minds and they felt they had been left with little or no alternative. Martin, whose son Woody was aged 2 when his parents separated, was at pains to point out that it was his ex-wife Jenny's threats to deny him access, and consequently his fear of losing contact with his son altogether, that led him to see a solicitor:

She basically just threatened me with, 'I'll move away and you'll never see him again. If you don't do this, that or the other then I won't let you see Woody'. It was just everything. Her point of control was Woody and I wasn't prepared to do that. ... I was absolutely terrified that I would lose him. At which point I went to [a] solicitor and said, 'look, she's not got to be able to take him off me'.

Sonhando, felt that having exhausted every other avenue, including marriage counselling and mediation (discussed in the section on conciliation approaches), he had no option but to go through the family courts:

She was making it very difficult for me to see the children. It was very much when she felt like it and very arbitrary. And she wouldn't agree to very, very, what I consider to be the fundamental rights of the children and myself. She wouldn't agree to any holiday contact; she imposed ridiculous conditions on where and how I



could see the children; and made it very difficult, you know, if one small thing wasn't met in her mind, then em, she'd then refuse access. And so that's when I just thought, well then we'll have to go to the court about this.

A fear that many fathers in both the French and British samples held was that their ex-partner might be tempted to move away with the children and make it very difficult for them to continue to have good contact. Joel gives us a good example of this:

[My wife's] family come from [the South of France], and I was always really scared that she would decide to leave this region and move back there. At first I was really scared, now, a little less so. But what would happen if I had to travel 600km each way? At the moment we're in the same town, only five minutes away from each other. By contrast 600km, I couldn't do it! But I know that deep inside her she would much prefer to go and live in the sun.

Many felt that some official court order could help prevent this. Simon, for example, felt that only a shared residence order could really stop this from happening.

**Q: If you could, would you prefer to have some sort of court order in place?**

Oh absolutely! Oh god yer, absolutely! Yer, any form of [order], yer. ... With the joint residency, the only thing that, without that in place, that could crop up, is she could suddenly decide to move to Milton Keynes!

Here, the fathers' narratives appear to reveal a widespread misconception of what a court order can deliver. In Simon's case, a shared residence order does not preclude the right of either parent to move away from the area, so there is an issue here in relation to the public's perception of the law and the law as it really stands. It raises questions about what is needed to have a more educated public in the sense that *a priori* couples (mothers and fathers) should be made aware of their rights at an early stage, thereby dispelling many of the myths attached to common law. What these narratives also reveal is the sense of insecurity many fathers can feel. They expressed a strong desire to know where they stood and to have the stability of knowing exactly what the situation would entail on a day-to-day basis.

### **Vulnerability: the need of fathers to live with ‘certainty’**

The issue of vulnerability and that of ‘certainty’ in arrangements were two of the key issues that arose repeatedly in the fathers’ narratives. Indeed, many fathers who had an arrangement that had been ‘privately ordered’ often felt themselves disadvantaged relative to those fathers who had a court order – even where agreements appear to have been made in good faith.

Sometimes, unspecified or unspoken arrangements would develop without any specific agreement having been made. Fathers spoke of their fears that these arrangements would continue only so long as mothers were willing for it to continue. Fathers often found that their main security in continued arrangements lay in the relationships they held with their children. They believed that as the children got older, they would then be able to express feelings and opinions of their own or indeed have these taken into account, and that this could then act to prevent mothers acting unilaterally. As one French respondent, Didier, explained:

The children have [now] grown up and they have their own opinions. When they are small, you can’t ask a child’s opinion when they are 3-, 4-, 5-, 6-years-old. They aren’t aware. Now they are 13 and 9-years-old they can give their own opinion. And after three years of things being like this, there’s no reason why we should change anything, because they’ve got used to it.

In Mark’s case, his ex-wife had continually talked about moving back to her country of origin:

I was terrified to start with that she’d go, and then you know, Raoul is as old as he is and now Juan is actually as old as he is. As I understand it, the courts from the age of 12 will start listening to the children, and if the children say we want to stay in London, which Raoul and Juan would both say, I believe, [there shouldn’t be a problem].

Feelings of vulnerability generally stemmed from a lack of trust in their former partners, and are borne out in various behavioural patterns fathers adopted such as keeping diaries, records of events and noting periods of residence. Simon, for example, who although being the *de facto* primary carer for his two children for a period of around

three months post separation had not been in receipt of Child Benefit and therefore, he claims, was not seen as the official resident parent, explained how he would keep records as a matter of course:

I've got tape recordings of her on the telephone ... ranting, 'I am the mother. I have all the rights. You're lucky that I let you see the children!'

**Q: About these tapes. You obviously still feel vulnerable. Are these something that you're saving in case things go wrong?**

Oh absolutely! Yer, I save everything. ... I [also] used to keep a little diary every day that I had them, and then it just got so ridiculous that I stopped doing it, which was a bit silly really.

What fathers felt might be useful to record and save, opened up discussions of their initial understanding of what a legal dispute might entail.

### **Fathers' understanding of the legal process**

Fathers going through a legal dispute often echoed the sentiments of fathers who had made arrangements privately, in that they felt unsure of their rights and had little knowledge of the legal process. Martin, for example, thought that his ex-wife's threats to not let him see his son if he didn't do exactly as she asked could be carried out:

I didn't know anything. I felt that her power would be that she could do [what she wanted]. I had absolutely no idea what could happen. I heard horror stories, but I didn't know my rights.

However, to talk in isolation about fathers' understanding of the legal process could act to mask the importance of mothers' understanding and, indeed, their own expectations of family law. This could impact on the development of care arrangements in unusual ways. Didier, for example, a French respondent of two children aged 10 and six at the time of their parents' separation, claimed that he had ended up with a shared residence arrangement largely as a result of their mother's misconception of the legal process. Didier explained that his ex-partner had been married before and that when she separated from her former husband there had been no question in her mind that she

should not have custody of their son and receive maintenance for him. Consequently, there had been an assumption on her part, Didier went on, that the same thing would happen this time round. Indeed, she had been so confident that she had not employed the services of a lawyer, instead filling out the required form and sending it directly to the judge.

It was me who proposed shared care – 50/50. Well of course she didn't agree, because when one is going through a separation one goes into a psychological conflict.

Didier makes a strong and often neglected point here: that when one is going through a separation, whatever the reasons for the separation, one is going through a 'psychological conflict' of sorts. Therefore, this may not be the best time to pit parents against each other in order to determine who will have the residence of the children. In respect of shared residence, this is now to some extent recognised within the French family law system. Parents have the right to ask for shared residence and judges have the right to order a trial period even against the wishes of one or other of the parents. Unfortunately, given that French respondents separated before the 2002 reforms came into force, examples of how these changes have impacted on separating families have not been reflected in the French sample.

### **Legal officers**

There was a general consensus among the British fathers that involving solicitors had been unhelpful. Likening the firm of solicitors his wife had instructed to 'vicious dogs', Colin explained why:

She brought in a firm of solicitors and they kind of immediately stuck the boot in and said, 'you're doing this!' and 'you're doing that!' ... I still have a real problem with setting a solicitor on her. You know, she's found now, she's on her second set and they're real rottweilers, and I can't see how it helps because it's, you know, 'you did this' and 'you said this', and it's all the negative things, rather than er, now seven years of by and large, I hope, fairly positive parenting.

In Colin's case, he became all too aware of the negative impact that solicitors could have on the situation and although the approach adopted in his case was through the family courts, Colin nevertheless determined to represent himself:

There's nothing like the sort of onslaught you get than a solicitor to make you feel a bit besieged really. ... I couldn't see how me getting a solicitor, that was going to turn it into an ever-bigger fight, was going to help.

Steve, who shares the residence of his two daughters aged 14 and 12, maintained that if it had not been for the involvement of his ex-wife's solicitor an amicable agreement would have been reached much earlier, thereby avoiding the hostilities that ensued. He also draws our attention to the relationship between cash and care that can act in inappropriate ways to influence negotiations:

Initially Amanda was angry with me but I would say that passed within a year, and actually, despite her hurt, we were reaching a fairly amicable agreement about how we would share our assets and how much contact we would have with the children. ... within six months really. ... We pretty much agreed, all bar a few minor details that 60/40 was a fair split and then she consulted a solicitor!

Steve not only claimed that the solicitor had advised Amanda that she should seek a settlement of more than 80 percent of their assets but that she should also be less flexible on contact:

I said, 'Well it's wrong'. ... So that actually led to me having to go to court. ... the [court] order was necessary because of the intervention of the solicitors. If it weren't for the intervention of the solicitors, we could have agreed it.

The French sample were not as disparaging about their *avocats* (lawyers). Indeed, several had found them extremely helpful; in particular those *avocats* that had been found through fathers groups, as Hussain reveals:

I had the good fortune to have a good lawyer. A lawyer who was part of an association that defends the rights of fathers. He argued that since it was my wife

that wanted to leave, she should not be able to stop me seeing my daughter, he did everything he could for me.

Nevertheless, there were others who found that as far as shared residence was concerned, lawyers could be anything but helpful. One French respondent, Gerard, explained that he and his ex-partner had agreed to ask the judge for shared residence of their daughter, aged 3 when her parents separated, but that her lawyer had advised her against it:

Immediately, her lawyer said, 'No, no, no, say anything but that! If not, the judge will think that you don't want custody of your daughter and he'll give it to her father'. And so, in front of the judge she ended up asking for custody of her daughter. But at the start it wasn't what she wanted, she didn't want her daughter all the time, she wanted shared residence.

In Jean-Pierre's case, he was advised by his lawyer that in France mothers have all the rights and 'above all [not to] demand too many things'. Despite having had an alternate weeks arrangement in place for the best part of eight months since the separation, the judge ruled against shared residence:

So, no, the judge said 'Ah, but no!' at that period in time it was like that, it was in 1998, so the judge said straight away, 'Ah, but no, we don't grant shared residence in Paris'. Just like that, 'We don't grant it!' So in that respect the lawyer had absolutely not done his work at all well.

In general, fathers revealed a general reluctance among lawyers and family judges to see shared residence as a genuine option they were able to pursue in the courts. This attitude has now changed somewhat in France since the 2002 reforms of parental authority. However, because all respondents were recounting experiences that took place before the reforms, they reveal remarkably similar accounts to those of the British respondents; namely, that the idea of shared residence as an option has not been one that is prevalent among lawyers or the judiciary. Asked directly, respondents revealed that at the time they were going through legal proceedings, shared residence was not on the table as an option that could be pursued through the courts. Sonhando, reinforces this point:

I was told in no uncertain terms, by every lawyer I spoke to, that [shared residence] is just not granted to fathers. It's never granted to fathers.

### **The Family Courts and support in court**

In Britain, a reluctance to accept shared residence as a viable arrangement for families post separation and divorce is still all too clear among the judiciary and the Court Welfare Services. It appears that legal officers can intervene to influence events even where parents have come to an agreement. This is reflective of an historical antipathy towards shared residence by the courts and welfare agencies. Colin and Ellie, for example, had already reached a shared residence agreement, which involved their son spending equal amounts of time in each household over the year, 7 days out of 14 and half the holidays. Colin, who wanted an official court order to be made in order to allay his fears that his son's mother might suddenly decide to change the arrangement at some point in the future, explains:

So we go into court, present this agreement in her solicitor's handwriting for the judge. The judge looks at it and says, 'this is kind of unusual, we don't normally grant this kind of order!' [...] The Judge and the Court Welfare Officer just raised an eyebrow and her solicitor said, 'well, this is what they've been doing [since they separated] ... It was all going fine, her solicitor wondered what they'd been doing and then the judge sort of umming and arring and then Leah sort of piped up and said, 'well actually I don't like this agreement either'. So the Judge adjourned it.

Colin felt that the District Judge and Court Welfare Officer's reaction to the proposed shared residence arrangement, that had been in place *de facto* more or less since they separated, spurred Ellie on to change her mind about the shared residence order. Given that the Judge and Welfare Officer appeared to be recommending that there should be one primary carer, Colin felt that this had given Ellie the impetus, as Toby's mother, to declare that she should be the primary carer, despite Colin's assertions that she had initiated the separation and historically it having been Colin who had put his career on hold and stayed at home with Toby.

As Colin had decided to represent himself, I asked him if he had had any support in court. Anyone to sit and take notes, offer advice or just provide a bit of moral support.

He explained that a father from his son's school had offered to accompany him. He was, it appears, one of several parents willing to do this. I asked Colin if this friend had had any legal experience:

None whatsoever, he wasn't there helping ... moral support, yer. And he's one of two or three parents that actually offered to come. I could have taken a little posse with me.

In the event, Colin and Ellie settled arrangements at a 'round-the-table' meeting at her solicitors. It was formally agreed that Colin would have Toby six days out of fourteen with slightly more time afforded Colin and Toby over holiday periods. The arrangement was to be set up under the auspices of a s.11(4) shared residence order and the Child Benefit was to be signed over to Colin. It is notable that Colin went on to claim that despite having signed a Consent Order, no specific s.11(4) shared residence order had been forthcoming. Indeed, he had been confused as to whether or not the two Orders were one in the same thing. Since Colin was the only respondent in the British sample to have agreed arrangements under a shared residence order, it is of note that no such order was forthcoming. This may indicate that a judicial preference towards the use of Consent Orders for settling financial matters – for example, in respect of the division of money, property, life insurance, pensions, savings and the amount of maintenance to be paid for the children – without the need to go to court is now becoming more widespread with respect to the organisation of where a child is to live.

### **Court welfare services**

In the British context, Martin recounted his experiences of the involvement of the Family Court Welfare Service as part of Family Court proceedings:

Before we went into court we had to talk to the child welfare officer, [but] Jenny refused to have it in the same room as me, so she was interviewed by the welfare officer and I wasn't. And er, basically the court welfare officer said to me with my solicitor there, said that 'Woody's so young still' ... being about three-and-a-half at this point ... that he's still too young really for us to make any real decisions. We would like him to be older. And she said, 'What I would like, is for you to continue the way you're doing', umm, 'by sorting it out between you, without any court ruling being put into place'. Em, and quite frankly I was amenable to that,



and I've always been amenable to that. If Jenny and I could sort it out between us then that was not a problem. The problem only arose when she threatened to stop him from seeing me and that was why I felt I had to take certain measures.

Martin's account of the court process is illuminating on several counts. First, in the Family Court Reporter's (Court Welfare Officer) clear adoption of the private ordering or 'no order' principle, as outlined in the *Children Act* 1989. Secondly, in the way in which the Judge defers judgement to the welfare officer. Although Martin concedes that going through the court process did not help him to increase his contact with Woody, he nevertheless felt he had established some certainty and control over his life and in his relationship with his son. By going through the court process he felt that he had made Jenny realise that she did not have total control over his or their son's life, and that using Woody as a point of control to threaten him was just not acceptable.

By me going through the processes to get her into court to make her realise that I was willing to fight for everything! I felt I got her under control, if you like. So that she realised an acknowledgement that I would fight to the bitter end. So in a way that's how the court helped me. It didn't do anything for me apart from making her know that nothing would stand between me and Woody.

Where parents could not agree about care arrangements between themselves the need could arise for a third party to help mediate discussions. As such, the final section of this chapter explores fathers' experiences of conciliation approaches.

## **Family mediation and conciliation processes**

As part of a wider recognition that Family Courts may not always be the most appropriate places in which to resolve conflict about the upbringing of children, the past two decades have seen a new dispute resolution option become available for divorcing and separating parents, namely, family mediation. Whether taken up voluntarily within the private sector or, as has more recently been the case, with an initial element of compulsion as part of wider court-based approaches, a mediated approach involves separating parents meeting with an independent and impartial third party for discussion

aimed at facilitating mutually acceptable agreements. The process is designed to empower those using the service to arrive at their own solutions and therefore decision making rests with the parties themselves rather than the mediator.

As noted earlier in the introduction to this chapter, family mediation has to some extent become allied to either one or other of the above groupings; typically, private mediation alongside private ordering, and public mediation to more court-based approaches. As such, this section has been structured in order to reflect this division. Here, I look at forms of alternative dispute resolution that fathers took part in, including relationship/marriage counselling. While this was not focused solely on resolving care arrangements for the children, it could nevertheless act to indirectly influence the way parents proceeded. Finally, fathers' thoughts on mediation are discussed relative to the wider sample of respondents and any differences in approach cross-nationally are highlighted.

### **Private mediation**

For those fathers who had at some stage followed a mediated process, it had not always been considered as a first port of call, or even as an option. Christophe, for example, a French respondent of two daughters aged 7 and 4, describing himself and his ex-wife as 'hot-blooded', explained how a series of heated arguments had led to them both being taken to the local police station where, after two or three times of this happening, a police *commissaire* (superintendent) suggested that they might benefit from seeing a mediator. Christophe explained why mediation had worked for him:

So we went to see one, a really nice lady who saw us each in turn, after which we saw her again at the same time in an attempt to find some solutions. It's because of [mediation] that I'm able to talk to you about me, her and our children, because it was [the mediator] that talked to me about it and made me reflect. I mean to say that for the children there are two sides – the dad and the mum. But for the dad and the mum, *they* have to rebuild their lives ... The problem had been that for over two years I hadn't thought about myself. ... My girls and my work had made me so very, very tired, so very, very nervous. I came home, I had the girls, I did things with them, I ate in the evening and went to bed. It was like that. ... So after two and a-half-years — three years, I took a little more time to get things in perspective and I started to think about me.

Here, the mediation sessions only fed indirectly into the residence arrangements. As Christophe continued, it became clear that it had been more about helping both parents to let go of each other and start rebuilding their own lives. This then had a knock-on effect on arrangements since the tension between them was reduced substantially and they went from a partial, to a more shared arrangement for their two daughters.

Initially, when Samuel's partner of 20 years, Alicia, made the decision to leave the relationship, he proposed that they should operate an alternate-weeks arrangement for their, at the time, 9-year-old daughter and 6-year-old son, in order to minimise the tooting and froing for the children. However, his partner kept insisting that she could not bear to be apart from the children at all, for any amount of time. Since it was the mother's decision to leave the relationship, Samuel conceded that he did not know what to do for the best, but tried to make Alicia understand that while she did not want to be parted from the children for a whole week, neither did he. In addition, he impressed on her that since he had done nothing wrong, and it was her decision to end the relationship, he could not understand why he and the children should be punished for her decision to leave. He maintained that it was necessary for both parents to acknowledge that there would be constraints and in so doing find an arrangement that would be shared and 'equitable'. As she 'categorically refused', Samuel realised that they would need a third party to mediate an agreement.

In this case, the intervention of the mediator led directly to Samuel and Alicia being able to move forward and establish a mutually acceptable arrangement. As Alicia was so vehemently opposed to not seeing her children for the whole week, the mediator suggested that it was perhaps too early to start with such long periods apart. Since Alicia did not work on Wednesdays, and the children were not at school on this day, it was suggested that it would, among other things, make sense financially that Alicia should have care of the children on these days. Through mediation, they reached an agreement whereby the children would be with their mother from Monday until Wednesday, with their father every Thursday and Friday, with alternate weekend residence. In Samuel's case, mediation lead directly to a negotiated settlement, thus abating the need to go to court.

For others, mediation played an initial role in attempts to exhaust every avenue before resorting to a more litigious route. Sonhando, for example, explained that he only went to court as a last resort having exhausted every other 'reasonable' means of resolving his and his ex-wife's dispute over residence. He explained that he had been determined to try marriage counselling in the first instance and subsequently mediation before even considering going to court. However, his ex-wife had not been at all amenable to the idea and only agreed to attend if Sonhando would pay her for the time she would have to give up by attending. So although Sonhando initially persuaded his wife to go to marriage counselling and later mediation, he not only had to pay the cost of the evening sessions but in addition had to pay his wife for attending:

I eventually persuaded her to try counselling which she said she would attend if I paid her to attend. I had to pay her £100 to attend counselling and she clearly wasn't into that. You know, in fact after the first session, she got half way through it [and] she just stormed out. And she did it again in the second one and refused to come back. So we then went to mediation ... and the same scenario developed then, where she would not come to mediation unless I paid her. [...] It was the only way I could get her in the room, you know, and you have to exhaust every possibility. I mean I knew, as has turned out subsequently, that the alternatives [were far worse, but] I wanted to exhaust every possible alternative, and I really did think that put into neutral ground with somebody else, who's better able to see the issues, that she might come round, but she had made her mind up long before then.

For British fathers attempting a mediated resolution, Sonhando's experience appeared to be its greatest drawback. Where one parent had already made their mind up and was essentially going through the motions, there was often a sense of disillusionment with the whole process.

### **Public mediation**

Martin explained how for himself and his wife Jenny, mediation had been the second stage in family court proceedings. Since Jenny had been on Legal Aid, they had been obliged to attend mediation before things could progress any further. While Martin paints a very positive picture of the mediation process in terms of receiving a sympathetic hearing, like other fathers in the British sample he too found that the

process came to an abrupt halt as his ex-wife felt that the mediator was ‘taking sides’ with Martin. As a consequence of which, she refused to attend any more sessions:

She interviewed Jenny and then I think she interviewed me and then we were interviewed together. Certainly I had time on my own with the woman, and then Jenny and I went together. The woman listened to me, understood what I was saying, knew where I was coming from. ... [Even though] Jenny wasn’t backing down in any way whatsoever, I came out of it feeling very positive. But unfortunately we then had a letter from Jenny saying that the mediation woman was clearly on my side and that she would refuse to go to anymore because she wasn’t taking her into account. So at which point we didn’t go to anymore. At that point then, we got a court date.

### **Other fathers’ thoughts on mediation and other forms of conciliation**

Several fathers who had not taken a mediated route spoke of how they would have preferred such an approach. Mark, for example, a British respondent of three children aged 14, 11 and 7, would have liked to have pursued a mediated settlement but explained that his ex-wife, Monica, had been ‘so hostile and so hell-bent on getting as much as she could’, it was a non-starter. He also explained that, once the solicitors had ‘moved in’, a mediated settlement had become much more unlikely:

With hindsight [I would have liked the opportunity for mediation], yes! Absolutely! Now, I would definitely, very much. At the time, because it’s a divorce, and people are kind of like, there are all sorts of other things going on [it doesn’t seem like an option]. ... If you removed the hostility, you should be able to wind it up within three months at the worst. It’s all sorts of, you know, ‘he’s lying’, ‘she’s lying’, you know, ‘he’s a bastard’, or false sort of accusations, or solicitors sending hostile letters, ... like somebody will say something that is not relevant to the divorce at all, it’s just a sort of side snipe that the solicitor sort of copies down and sends, and you think, that’s just so irresponsible, what are you doing? You should be trying to bring them together. [...] I just think get it out of the law and certainly get it out of adversarial law! The court cases are very, very stressful, extraordinarily stressful, and Monica found it extraordinarily stressful as well. We both did, we both hated it.

Finally, several fathers spoke about their experiences of other forms of alternative dispute resolution. Misunderstandings and personality clashes inevitably arise in situations of conflict being mediated through a person or persons with a particular agenda, which could be prejudicial. Marriage counselling has also been included under the conciliation heading. Daniel, for example, had agreed to go to *Relate* but conceded that his ideas about 'Living Apart Together' had not been well received by the counsellor:

We went to *Relate* but the women [we saw] ended up threatening to hit me and saying that we should definitely split up. So I wasn't very impressed with *Relate*!

In sum, while mediation processes appeared useful for fathers in the French context, the British fathers were often left bewildered by a process, which appeared to offer them a forum to be heard but lacked any real bite. Fathers generally found the mediators to be highly sympathetic and understanding. They very often felt that this had been the only real forum for them to express their fears, anxieties and hopes for the future, especially where they felt mothers were being somewhat intransigent. Several reported the mediator as being the one person to 'see things clearly'. In the main, fathers painted a very positive picture of mediation. However, as the above accounts reveal, a sympathetic hearing from the mediator had, in some instances, given the impression that they had taken the father's side, and as a consequence mothers had either walked out or refused to attend any further sessions.

## Summary

A very fine line appears to separate those parents who manage to make arrangements privately from those who go to court. Fathers appear to have become involved in a legal dispute over residence as a last resort, in particular where they felt 'a line in the sand' had been crossed whereby mothers had sought to alienate them from their children's lives; specifically, in the sense of imposing what they considered to be unacceptable restrictions on their relationships with them. This was particularly the case where

fathers felt that children were being used as a point of control. In these cases, fathers felt a lack of ‘fundamental rights’ on the part of their children and themselves.<sup>23</sup>

These findings are of some significance when taken in the broader context of the post-separation care of children. Where fathers do go to court, there appears to be a tendency to think of these cases as being somehow deviant. What fathers reveal in these accounts is that the key element in determining their approach appears to be the fear of losing a full and ongoing relationship with their child(ren). In this sense, many fathers who go to court over residence vary very little from those who make arrangements privately.

Fathers’ feelings of vulnerability and the issue of living with ‘certainty’ in arrangements, are some of the most important findings to emerge from the data here. Whether or not fathers were involved in private ordering or legal proceedings, the desire for stability in terms of knowing where they stood and knowing what the situation would be on a day-to-day basis, for themselves and for their children, cannot be overstated. Indeed, it is key to understanding the motivations of respondents and the ways in which negotiations proceeded.

Fathers felt insecure in terms of their continuing relationships with their children in ways they perceived that mothers did not usually have to. It is unusual for mothers to feel that they might lose contact with their children following parental separation; that the fathers might, for example, move away with the children. Fathers, on the other hand, could often experience a sense of becoming a ‘second-class’ parent. Consequently, for many that went to court or had an agreement drawn up by a lawyer, they desired something concrete that tied them to their children other than by virtue of them being their biological father alone, since this appeared to them not to carry the same weight as being a child’s biological mother. Fathers felt, in many cases falsely, that an order by the court would give them this security and stop mothers from being able to take arbitrary decisions. Unfortunately, this desire for some concrete signal could in some cases militate against private ordering as well as mediation approaches, and led to cases being brought before a court which might otherwise have been resolved amicably.

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<sup>23</sup> It is of note that there were only two cases where it had been mothers who had instigated court proceedings, both of these were within the French sample groups.

In terms of mediation and conciliation processes, fathers on the whole felt positive about their experiences of the mediation process. The mediation environment appeared to offer them a forum in which their voices and opinions were listened to and valued and a venue in which they felt they had been treated as equals. They felt that their parenthood and parenting skills were not ‘inevitably’ and ‘immediately’ called into question by virtue of being a man, as they often felt was the case within the legal framework. However, given that several fathers reported mothers refusing to attend or feeling that the mediator had taken sides with them, mediation was felt to lack bite and fathers indicated that they could be left feeling bewildered by a process that in no way fed into further structural considerations. Nevertheless, in most instances, fathers found the experience cathartic and felt that they had received a sympathetic hearing.

The points and issues fathers raised in this setting were often the ones they felt they would like to raise within the legal process but were not facilitated. However, fathers highlighted how mothers could feel that the mediator was taking the side of the fathers or were not respecting their wishes. Despite its drawbacks, many still maintained that this route was far preferable to a legally based approach, including several fathers who had not been party to mediation. The need for a third party in establishing contact arrangements at a time when emotions could be running very high was evident from the data. For all its drawbacks, mediation could, in some instances, fulfil this role as well as enable parents to move on, in emotional terms, from past relationships and what, for many, could feel like a bereavement.

There was no indication that the age of the child had any bearing on the particular approach parents adopted or in general on the outcome in terms of a negotiated settlement. However, there were indications that the child’s age could play some role in the way third parties approached matters. For example, in Martin’s case, the Welfare Officer had said that his son was too young to make any decisive decision as to residence and was content for arrangements to continue as they had been.

It is significant that these fathers with shared residence express sentiments more closely associated with those of non-resident fathers who have minimal or no contact with their non-resident children, in terms of feeling that they had become *the second parent* or to



coin Simone de Beauvoir, 'The Second Sex', indicating a much deeper malaise around gender and the practice of care giving. Despite the very close relationships these fathers had with their children and the relatively high levels of contact they enjoyed, they still experienced a sense of becoming somewhat sidelined 'in the shadow of family law' relative to their role as one of two principal carers.

The father's accounts also draw our attention to the fact that parenting was not necessarily something that ended when the children swapped their residence. Very often, the shared nature of the care arrangement did not mean they could switch into a 'child-free mode', as they would often have to make themselves available or be pre-planning and organising child-related activities during the times they were not with them. Indeed, as we shall see in the chapter that follows, many fathers organised their working life around the times the children were with them.

Finally, in terms of comparative differences between the samples, in contrast to the French sample, there were no instances in the British sample in which a shared residence order had been given. Where parents had gone through a legal process in the British context, this had generally resulted in a residence order in favour of one parent and a contact order in favour of the other. Arguably, the lack of 'access' – as fathers saw it – to such orders is not only worrying for families symbolically, where one parent is seen to be legitimised over the other, but in terms of shared residence more generally as a post-separation parenting solution, their infrequent use in the British context may act to give a false sense of how parents are dealing with the post-separation care of children, giving the impression that a sole residence model is still the preferred model of choice. As we can see from the fathers that have taken part in this study, where shared residence has been adopted from legal proceedings, this was most often under section 8 defined contact orders other than s.11(4) shared residence orders. Not only does this result in misleading figures, but if shared residence is not acknowledged for what it is, this may arguably be highly discriminatory. In legal terms, shared residence orders may be primarily of symbolic value, but as we shall see as we move into Chapter 9 and fathers' experiences of the resident/non-resident policy divide, this can act in very real ways to discriminate against the non-resident parent and, indeed, this model of family life as a realistic option for some parents.

## **Chapter 9**

### **The structural dimension: in the shadow of policy**

#### **Introduction**

The current policy frameworks within which shared residence takes place in Britain and France have been outlined and discussed in Chapter 4 of the thesis. I now provide an empirical reflection of these discussions through an analysis of how social welfare mechanisms and the allocation of a ‘residence’ status, in particular, are negotiated and managed by respondents. The relationship between employment and caring responsibilities is also examined, as is the influence of wider cultural and official recognition; for example, in relation to school life and aspects of professional interaction. It should be borne in mind that several significant policy reforms (outlined in Ch. 4) have taken place in France since the qualitative interviews took place. Therefore, French respondents occasionally refer to policy contexts that have now changed. In some instances their accounts can be seen as somewhat prophetic. The chapter is set out under the following theme headings:

- Social and welfare policies: in terms of income and maintenance, taxation, social security benefits and healthcare.
- Housing issues: in respect of access to affordable and appropriate housing.
- Schools and parents: which looks at cultural and official recognition, in terms of community as well as professional recognition and interaction.
- Paid employment and responsibility for childcare: in terms of school operating hours, childcare facilities and the extent to which fathers have adapted their working lives.

Before outlining the key findings from this part of the study, it is important to note the issue of a child’s address, since it permeates the following analysis. In order for a child to be enrolled at a particular school or be registered with a medical practice or dental surgery, standard practice dictates that they will normally be recorded as living at a specific address. It is also generally assumed that this ‘official’ address will be that of

the child's legal parents or guardians and that where parents have separated this address will be that of the 'resident' parent. It is also generally assumed that this official designation cannot be held simultaneously at separate addresses. However, where the residence of the child is shared it does not always follow that the recorded address will remain constant or necessarily be that of the same 'official' resident parent. After all, where children spend equal or near equal amounts of time in each household, what qualifies one parent over another as the 'parent with whom the child normally resides' or '*celui qui supporte la charge effective de l'enfant*' (i.e. typical residence criteria taken from respective UK and French family benefits guidance and regulations)? This designation may stem from possession of a residence order from the courts. However, it may equally derive from the receipt of family allowances or be allotted to the parent whose address is the official domicile of the child at the school they attend or whose address is recorded in relation to the use of healthcare facilities.

What an analysis of fathers' narratives reveals in this chapter, is that the registered address of the child will often vary according to the particular welfare or policy measure or mechanism under consideration. Very often, the 'official residence' of the child is something that is dynamic and managed in light of certain, often complex, negotiations that are perceived to be of mutual benefit in the care and upbringing of the child. The analysis also reveals that where official residency has not been set out as a *fait accompli* – that is, for all intents and purposes remaining solely with the mother or solely with the father – its management often requires a certain amount of, what one French respondent described as, *magouillage* (or cunning) on the part of parents in order to work the often disparate systems that are in place to their best advantage. As we explore the various welfare institutions and policy mechanisms under consideration, fathers describe how they are positioned relative to them, and how and why this has come about.

## **Social and welfare policies**

Being 'responsible' for the upkeep of a child carries with it certain financial obligations. In line with their level of income, this can entitle the 'resident' parent to some financial assistance from the state in terms of the day-to-day costs of bringing up a child: for

example, via family allowances; help with the facilitation and costs of housing, perhaps through state-sector accommodation (such as the *habitation à loyer modéré* [HLM] in France); reduced rate, or free, school meals; supplementary payments for childcare, and so on. This section looks at what some of these family benefits or *prestations* are and how they are worked out and distributed between parents. It ends with a brief discussion of respondents' experiences of engaging in maintenance (child support) payments between parents.

### **Social security, family benefits and the tax system**

Among each sample group, around half of all children were registered 'across the board' solely with one parent: that is, for the purposes of family allowances, schooling, healthcare, and so on. However, for a substantial proportion of respondents, the allocation of a residence status was often not clear-cut, or indeed permanent, and parents were often required to cooperate, negotiate, even 'collude' in order to arrive at the most expedient arrangements. Stephan, a French father of two, provides a good example of the dynamic nature of a resident parent allocation. He and his ex-partner, Sabine, had made arrangements privately and no maintenance changes hands between them. Nevertheless, Stephan revealed that certain trade-offs had been made in order that each parent might make the most of the French tax and benefit system:

As far as *impôts* [taxes] go, there's no recognition that I have children at all. What some parents do is to say, 'O.K.! Since we both have the children for one week each', they say; 'I'll have one child' and the other parent says 'I'll have the other child'. [We] would have been able to do that. On the other hand, however, you've also got to look at the allowances – the social security. And in fact, since I don't earn much money I don't get taxed. So because of that I say that I don't have the children while Sabine says that she has both of them. Consequently she ends up paying less taxes. And, because she earns a certain amount of money she's not entitled to social security anyway, whereas I am. So in order to get social security I had to say that I have the two children, so it all links up. You have to be a bit crafty! She wrote a letter saying 'I the undersigned, Sabine ... the mother of Thomas and Sarah ... confirm that the social security benefits are for Stephan.

What is interesting about Stephan's narrative is that it reveals how the tax and benefit systems in France do not articulate in the same way as they do in the UK. For the

British respondents, any reduction in the amount of tax payable relative to the number of children a family might have is offset through a benefit known as Working Tax Credit (formerly Working Families Tax Credit) of which Child Tax Credit makes up the relevant part and eligibility for which is determined in the first instance by whether or not a parent is in receipt of Child Benefit. In France, however, any reduction in the payment of tax relative to the number of children a family has is not directly dependent on receipt of *les allocations familiales* (family allowances). Crucially, there is no statutory text detailing who should receive payment of family benefits. The *Caisse nationale d'allocations familiales* (CNAF) has stated that any allocation will be made in favour of a parent relative to their caring responsibility. While this is usually decided by the parties themselves, where there is disagreement among parents, it falls on *le juge aux affaires familiales* (the judge hearing family cases) to adjudicate.

The issue of where a child is registered as having their principal or 'permanent address' lies at the heart of policy management in both Britain and France. Claude, a French father of two, explained that both the tax and social security agencies in France are increasingly aware that some children are spending roughly equal amounts of time resident across households. He revealed that although efforts were now being made to record this fact, with details of each parent being noted on file, they nevertheless still required a principal addresses for administrative purposes:

For tax purposes, they know that the children are one week at dad's and one week at mum's; there are two addresses registered. ... The same is also true for the social security, they know as well. [Nevertheless] the main address is their mothers.

This administrative division forced many respondents, along with their ex-partners, into becoming proactive in seeking imaginative ways of turning the system to their best advantage. As indicated by Stephan, where there is more than one child parents may decide to have one child registered at the home of each parent. In this way, not only might each parent potentially gain from family supplementary benefits but, more generally, it enables both parents to receive a reduction in the amount of tax payable relative to the *quotient familial* (or dependants' allowance set against tax), as Didier, a French father of two, explained:

There were also implications to consider like, for example, for tax purposes, should [we] have one of the children each. It's normal, since I share in the expenses. If I have two children half the time, it's the same as having one full-time. ... She put it to me that I should have our daughter and she have her son.

Other respondents emphasised how they were at pains to point out to welfare agencies that certain administrative formulations simply did not apply to them, and rather than collude with an administrative machinery that bore no resemblance to the lived reality of their day-to-day lives, preferred to 'say it as it was'! Anthony, a British father and step-father of three, provides a good example of 'not playing the game' when he sought to transfer the Child Benefit he had been receiving back into his ex-partner's name:

Going back to the forms, when we asked to get it transferred to the other parent, it says on there: 'When did the child stop living with you?' All these questions, there was about seven or eight boxes you had to tick, and there was not one box on there which said our circumstances. So we basically didn't tick any boxes and just wrote: 'still living with both parents', that's what I wrote; 'still living with both parents, but I'd like the money now to be paid to [my son's mother]'. And they sent the form to her as well, and she wrote the same look; 'The circumstances haven't changed, he's still living with both parents but I'd like the money to be paid to me', and we haven't heard nothin' back.

As payments are essentially made to one sole claimant, this would generally mean that the other parent was to some extent disenfranchised. As Claude highlighted in relation to family allowances:

They give it all to the mother, or all to the father, according to what you ask for. ... Unfortunately, she keeps all the family allowance for herself. For two children it represents in the order of €120 a month, more or less. There isn't a law [which allows for the sharing of benefits] yet. I hope the French government will change the laws in that sense, ... because in general, it's the mother who has all the money and it's really up to her. If she wants to be kind she could give half, but it's never the case, she keeps all the money for herself even though we have the same expenses; we feed them, we dress them, we have exactly the same outlay because

it's one week/one week. ... On principle and even if it means only a modest sum, it should be [shared].

Since the interviews with respondents took place, there now exists some provision for the sharing of family benefits in France (for further discussion see Ch. 4). In June 2007, the first payments of *allocations familiales* were made to both the mother and the father where residence is shared on a strictly equal basis. Nevertheless, although one parent alone would safeguard these benefits at the time when the interviews were carried out, this was by no means always the case in practice. In the British context, Jim, a father of two explained that although his ex-wife Nicky received the Child Benefit and Tax Credit, these benefits were shared between them:

When we originally first split, we claimed ... Nicky claimed, Working Family Tax Credit as well and then she used to write me a cheque every month to split it. ... It was something she suggested, because it is total joint custody. We tried originally to see if they would recognise [both of us], but they wouldn't at all. No, there was no room for that whatsoever. It's not recognised that the kids live in two houses. So, you know, because we both realised we could claim it, um, and through discussion and finding out, we said, 'right, you claim it then', because basically it was a case of who got in first and put the claim in first.

Interestingly, perhaps naively, Jim appears to have assumed that either parent could receive the benefit depending on who put their claim in first. In reality, it would have followed the Child Benefit, which would have already been being paid directly to the children's mother Nicky. However, this notion that the decision making was in some way negotiated between them, added a sense of working together and consequently helped to generate a mutual respect for each others parental role.

### **Family allowances**

Table 9.1 shows which parent is in receipt of family allowance. The generic term family allowance is used here to denote Child Benefit in the British context and *allocations familiales* in the French context. In addition, the Table highlights only the current arrangement, which may have changed over time.

**Table 9.1 The receipt of family allowance**

<i>Family allowance received by</i>	British sample (n=20)	French sample (n=15)
Fathers	6	3
Mothers	14	6
None paid	—	—
Both	—	—
Split (1 child each)	0	1
Unknown	0	5

*Family allowances in Britain: managing Child Benefit*

As outlined in Chapter 4, welfare recognition for families with children in the UK is dependent in the first instance on who is in receipt of Child Benefit. As we see from Table 9.1, mothers were by no means the sole beneficiaries of family allowance. In the British sample, fathers were in receipt of Child Benefit in just under one third of cases. Since Child Benefit is normally paid directly to a mother on the birth of a child, this meant that at some point the benefit would have had to have been ‘signed over’ by the mothers to the fathers. Respondents explained how and why this came about. For example, Anthony explained that:

She wasn’t bothered [about signing it over]. My son was spending more time here I s’pose. I was dealing [with things] more than what she was. She wasn’t living in her own house, she was in her boyfriend’s house. So I suppose originally she wasn’t that stable, if you know what I mean ... and I s’pose it was my responsibility to deal with it all, instead of swapping it from his home address. This is his home ... so it all kind of stayed here.

No cases emerged in which the Child Benefit had been signed over to the father unwillingly, for example, through an appeals tribunal. Rather, in most cases where fathers received the benefit, it was accounted for by a period – in some cases a lengthy period – of sole residence preceding a shared residence arrangement. In these cases, mothers had all left the family home and had agreed, albeit sometimes after some persuasion, to sign the benefit over. Kyle gives us another example:

The reasons for signing [the Child Benefit] over was basically Freya’s instability. ... her lifestyle was so unpredictable that Roly needed that stability there. So I



approached Freya and I said, ‘Listen, I think it’s best that the Child Benefit is signed over. One minute you’re saying you want Roly the weekend, the next minute you’re not even at the house. Em, and I haven’t got much money; my redundancy money is drying up, I’m going to need something to support [him]’. So it was agreed that she would sign this off. ... I was getting bills coming in. I had to pay her catalogue bills! All the backlog of bills that were left from when she moved out. It was an absolute nightmare. So in the whole sight of things [the money] was quite valuable and needed to be there to support Roly and put some food on his plate. It was important, you know ... So I think she understood in a moment of clarity that, you know, something needed to be done.

Other fathers provided different explanations. David, for example, attributed the fact that his ex-wife had signed the Child Benefit for all three children over to him, as enabling him to provide ‘proof of residence’ within a certain school catchment area. He explained that it wasn’t about financial gain, since in the main, the money he received from the Child Benefit was returned to his ex-wife.

What’s happened is that [my eldest son] is now in the first year of comprehensive school. So what we did is, we changed the addresses. She allowed that! ... He seems to have excelled since he’s been at this school and he’s done well through it. ... In order to do that, I had to prove that we had residence here, in [the catchment area]. So being persuasive, I’ve managed to persuade Jacqui to sign the family allowance over [for all three of them] in order to prove residence! It’s all a bit of a game really!

The notion that Child Benefit should provide a definitive ‘proof of residence’ is an interesting one. Richard and his ex-wife, Kit, had also agreed that the children should be registered with him in order to make best use of the school catchment area that Richard had moved into. In Richard’s case, however, it appears that signing over the Child Benefit was not a necessary precondition to providing ‘proof of residence’. Rather, he described the process as being more about levels of cooperation, understanding and trust.

Actually the children are registered as living with me. And the reason for that is as much tactical and practical as anything because I happen to live in a school

catchment that is more favourable for their secondary education than is Kit's. ... So again, that requires a certain level of cooperation, understanding and trust on Kit's part that I'm not going to go trotting off to the courts and say, 'Ahh, look', you know, 'the other party accepts that I'm the primary carer because the children are resident with me'.

This issue of providing proof of residence is indeed an important one. Current County Council guidelines within local authorities state that where 'parents share parental responsibility but live at different addresses ... Only one address can be used on the form and this needs to be the child's permanent home address. Parents need to agree the details and then return their form to [the] admissions team *with proof of their child's permanent address*' (e.g. Gloucestershire County Council, 2007: 19) [emphasis added]. They do not state explicitly what form of proof this should take. However, in Richard's case the fact that both parents lived in separate households was just not revealed to the admissions team, dispensing with any need to provide proof of residence.

Finally, in relation to Child Benefit, Simon (who had initially taken on a primary care giving role prior to adopting an alternate weeks arrangement for their two children) had put it to his ex-wife Ros that for practical reasons they should both claim Child Benefit for one child each. He explained that Ros was not at all happy about splitting residency in this way, claiming that it could impact negatively on the emotional wellbeing of one of the children, as they may feel that they were being in some way rejected by one of their parents. Simon, pointed out that he could not see the logic of this argument at all since the children would be unaware of these changes in any event and instead maintained that Ros's desire to have residency of the children had been driven by financial gain. In particular, that her desire to retain the Child Benefit for both children stemmed from her desire to seek maintenance from him, which, Simon believed, she would be unable to do if he were the resident parent for one of the children.

I think she would have liked it to have been that she had residency so I would pay her maintenance, [even though] she would let me have the children as much as I wanted them.

Simon's point is not without significance, since arguments are often levied that fathers' demands for more contact, let alone shared residence, should be viewed with some caution since they may be put forward purely as a means of reducing maintenance payments or, indeed, doing away with them completely. Here, Simon allows us to view this issue from the other side of the coin, leading us to ask whether demands for greater contact or indeed shared residence should be denied purely in order that one parent might reap certain financial gains.

*Family allowances in France: the case of allocations familiales*

In France, the range of legal welfare benefits available to support families in their daily lives has been set out in Chapter 4. This section focuses specifically on *allocations familiales* (Family Allowances). In contrast to Child Benefit, which is paid for each child under the age of 16 or under 19 in higher education and at a higher rate for the first child, *allocations familiales* is aimed at supporting families with at least two children under the age of twenty. 'Universal' benefits until 1997, they then became subject to means testing. This requirement was quickly dropped however, and from 1999 it was replaced by a limitation on the *quotient familial* (i.e. the proportion of income exempt from direct taxation for each child and dependant). These benefits increase when the children reach the ages of 11 and then again at 16, except for the first child of a family with two children.

Claude explained that, in France, benefits can be reviewed each year and are able to be reallocated: 'Each year you can apply to have the allowance reallocated. I do have a grasp on the problem but she has to be in agreement'. As Claude suggests, this reallocation will usually need to be negotiated between parents themselves. However, such a reallocation may now equally be made by a judicial decision. The Court of Appeal in Aix-en-Provence (23rd January 2003), for example, made a ruling in a case of shared residence that the entire panoply of family benefits would be paid first to the mother and then to the father on consecutive years.

Some French respondents, who attempted to see if their ex-partner would share the family benefits, got short thrift, as Didier recalls:

[My lawyer] talked to my wife about family allowances. She said that it might be good to share [them]. So there my wife said, ‘No! Absolutely not!’ she shouted, ‘out of the question, he earns more than me, etc...’ And it was left at that.

In Gerard’s case, his ex-partner was quite happy for the benefits to be transferred into his name. Gerard explained that since they only have the one daughter between them, she would not have been eligible to receive any *allocations* and that her salary would have been too high to make it worthwhile in any event. On the other hand, since he had repartnered and now had two additional step-children and a new-born baby son in addition to his daughter – *une famille nombreuse* (a large family) – they could benefit greatly from these allowances. He explained that his ex-partner had made *une attestation sur l’honneur* (an affidavit) in order to transfer the benefit into his name. Gerard’s description highlights how France remains very much a pro-natalist country.

In France you can get benefits [*des allocations*] if you’ve got more than one child. If you have only one you don’t really get anything. The more children you have, the more benefits you can get. So, as we’re a recomposed family, we get them because we’re a family of three, well now we get them for four.

In general, the accounts of French respondents indicate that mothers were amenable to finding mutual solutions in managing family benefits where it made financial sense to them and would benefit the children. Certain other benefits could also be extended to families indirectly, for example through national healthcare measures. These also required a certain amount of management, given the French system of payment and reimbursement.

## Healthcare

In France, children have traditionally been registered on the *sécurité sociale*<sup>24</sup> (National Insurance) number of one of their parents, of which *l’assurance maladie* (health insurance) makes up one part. This parent will pay, up-front, for their children’s medical

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<sup>24</sup> The French public welfare system is financed by compulsory contributions paid directly from salaries and by employers. It covers essential healthcare, pensions and other basic benefits. In many cases, costs not covered by the *sécurité sociale* may be met by a *mutuelle* (a complementary insurance scheme).

treatment and then be reimbursed by the state where they are entitled to do so. Claude, explained how the system of payment and reimbursement works in France:

When the children are ill, I take them to the doctor and I pay for the consultation. I'm reimbursed by the *sécurité sociale* because my children are on my *sécurité sociale* number. That's important! I get reimbursed for all treatments and medicines. The dentist knows that because it's my *sécurité sociale* number, and at the doctors ... it's me who pays and they reimburse me. Everything to do with the dentist, doctor, hospital; it's me who pays and I make sure I get reimbursed.

As Claude indicated earlier, it is his ex-wife who is in receipt of the family allowances and yet both children are attached to *his* health insurance, which in normal circumstances is consigned to the parent with '*la charge effective et permanente*' of the child; in other words, the resident parent. While Claude maintains that he will generally deal with any professional body regarding his children's health, this may not always be possible and for many other parents this link between medical insurance and one exclusive parent may potentially cause problems when the parent who does not have 'the effective and permanent charge of the child' must pay out for medical treatment up front while not being in a position to be reimbursed.

However, *la loi du 4 mars 2002* has provided that measures be put in place under Article L.161-15-3 of the *Code de la sécurité sociale* that will now enable children to be affiliated to the *sécurité sociale* of both parents where each is in paid employment. Although the precise conditions under which these measures were to be implemented were not finalised until some time afterwards, this provision is now in place. In line with the possibility of sharing *allocations familiales*, this latest measure can be seen as part of a drive in France to underpin the importance of parental authority, strengthen the notion of *coparentalité* and consequently facilitate a dual-carer model of post-separation family life that, in policy terms, contrasts sharply with social policy in the British context.

For British respondents, the requirement of one permanent address meant that the parent who was not the 'official' resident parent would either have to involve themselves in the time consuming and administratively complex job of filling out a 'visitors' form' every time they took the children to their local General Practitioner (GP) or decide to make the

trip each time to their ex-partner's doctors surgery. Despite originally keeping the same family doctor after separating, Jim's ex-wife, Nicky, has now moved house and as a result has changed the children's GP. Jim described how he now takes the children to their new doctor's surgery rather than to the family doctor his children had been seeing since they were very young, as the children are now registered there. Indeed, he was unsure of whether taking his children to their former GP would even have been allowed:

If they were ill and they were with me, I would have to take them to her doctors. I don't think I could [take them to mine]... they're not registered at my doctors [anymore]. Whereas, it would be easier if they could be registered at two doctors really ... but then [where Nicky lives], it's not that far away anyway, so I could get them there, [whereas] dentists, it's still exactly the same dentist. We pay, you know, a private dentist, so it's not a problem there.

### **Child support payments between parents**

A substantial body of research has emerged linking contact with issues of financial support (Bradshaw *et al.*, 1999; Davis and Wikeley, 2002; McKay and Atkinson, 2005). Where contact is taking place support is more likely, conversely, where no contact is taking place, maintenance can often be resented and resisted by the non-resident parent. However, where the residence and care of a child is shared on an equal or near equal basis between parents, does this diminish or decry the need for child support to be paid altogether? This section looks at the financial transfers that were taking place between parents.

**Table 9.2 The transfer of maintenance between parents**

<i>Maintenance paid to</i>	British sample (n=20)	French sample (n=15)
Fathers	0	0
Mothers	8	6
None paid	11	8
Both	—	—
Split (1 child each)	—	—
Unknown	1	1

*Note:* Table 9.2 shows only the current arrangements, which may have changed over time.

What strikes us immediately when we look at Table 9.2 relative to child support, is the number of separated couples where no maintenance payments were taking place. In around half of all cases in both the British and French samples, no formal payments were made between parents. Where any maintenance was being paid this was invariably made by the fathers. In neither the British nor French sample groups did mothers pay any child support. However, given that over two-thirds of mothers in the samples were in receipt of family allowances this is, perhaps, not surprising. Gerard provides a good example of why maintenance did not generally change hands between parents. In his case, he explained that all costs were shared thereby negating the need for such payments to take place:

I share everything with [my daughter's] mother. Each of us have our own expenses. For clothes, her mother buys some clobber or some shoes, when she's with me I'll buy her some as well. For the school dinners, we pay half each; I get sent the bill, I let her know how much it has cost and she gives me half. We always split the costs. She takes care of all the expenses when she's there and we take care of them when she's here. That's it! We don't pay each other any maintenance.

Where no formal maintenance was being paid, this did not necessarily mean that no material support was forthcoming between parents. Hal, for example, described how he and his ex-partner Jodie would 'chip-in' where they could:

She recognises that I ... sometimes shoulder certain financial responsibilities an' then she'll chip in, you know, without me even asking. She'll offer to help out with different things. But then lately, say in the last couple of months, Gavin's been spending more time at his mums ... so I've been sort of chucking her a bit of groceries an' all, because I'm not feeding him as much as I usually [do]. It ebs and flows like that, you know.

According to many fathers, parents were generally in agreement that since the care of the children was shared it was only 'right' and 'fair' that no maintenance payments were made between them. Richard, highlights how fathers could feel a sense of resentment at paying child support where care was shared in more or less equal measure:

The thing that's stuck in my core more than anything, I don't blame Kit for falling out of love with me, I mean, life's fickle and nobody's perfect, ... but I won't go one inch past that and start subsidising her lifestyle. And I think most dads feel the same. And so there is quite a big tension over money, that clouds the whole welfare of the children issue. ... despite the fact that I have the kids nearly half the time I pay Kit [£500 a month]. We were using the CSA guidelines as a template [but] I personally would have preferred to have worked out what the children genuinely costed. I would have preferred to have sat down and made a great big long list of, you know, how many pairs of school shoes they need each year, how many, you know, how much it costs to feed them each week, how much, er, school dinners costed and all this sort of stuff, and work up to a truer figure, um, because like most fathers, it's difficult when you're paying money over to, in my case, somebody who left me and had an affair, it does kind of stick in the core a bit!

Richard's frustration is compounded by the fact that his ex-wife is a medical practitioner and therefore, according to Richard, has as great an earning potential as he does. In addition, he has also repartnered and now has financial commitments beyond those of his own two children. Given the links that exist between cash and care, it is unfortunate that Richard did not indicate whether he felt the maintenance payments he made to his former wife had in any way influenced her amenability towards adopting a shared residence arrangement. This aspect would have added a further related dimension to arguments surrounding the 'affordability' of shared residence.

## **Housing issues**

For separating couples with children where 'suitable' accommodation is a primary concern for each of the parents, issues around housing can become problematic and impact greatly on the ways in which child contact and residence takes place. For the parents in the samples on low income, who were either not entitled to housing benefit or who had lost access to the family home, for example, through a divorce settlement, finding suitable accommodation could prove extremely difficult. Hal, for example, explained how it had taken years for his ex-partner Jodie to establish suitable housing in order for her to have overnight staying contact with her son:



For a long time she wasn't in the situation where Gavin could even stay over the night ... She was staying in a hostel in [town] which wasn't suitable for her and for her trying to be a parent and re-establish herself as a parent, you know? That was a nightmare, 'cause your neighbours are deadbeat drunks and whatever else.

For the last year or two, Jodie had been living just 'a short walk' from Hal, in which time their son Gavin, now aged 13, had been living across households. Hal explained that although things were working so much better and had ended up 'becoming what you'd hope it would be' in terms of the shared residence arrangement, things were nevertheless difficult, for Jodie in particular, as she had never been recognised by the housing benefit agency as having any childcare responsibilities. This meant that when Gavin stayed overnight with her she had to give up her bedroom, as Hal explained:

Jodie has only got a one-bedroom house and she can't have any more than that because Gavin's not officially living with her. ... To this day she can't get a place that would have two bedrooms, so she's sleeping on the couch and Gavin has her bedroom. It's an ongoing situation. I know other people like that as well. [...] And you can't win because if she gets it then I lose it, and I wouldn't be able to afford to stay here, you know?

Jodie had been treated in the past for alcohol abuse and had spent some time hospitalised. She was now in receipt of disability benefits. What is of particular note in Jodie's case is that Hal feels that had she had some recognition of her housing needs – in relation to her family life – earlier, 'it would have aided her recovery no end'.

Martin also only has one bedroom in the flat that he rents. This, he explained, was his 7-year-old son Woody's room, which had been made child friendly and which Martin was at pains to make sure he recognised as being 'his' room.

When we had to go to court for the financial settlement, I didn't feel that it was fair that I should have a one-bed flat to try and keep my family together and Jenny should have a three-bedroomed house. As I say, I'm still in the same one-bed flat, but the bedroom is Woody's, em, and he knows it's his. ... I sleep in the living room on a futon.

Both fathers highlight the very real plight faced by separated parents unable to access support in relation to their housing needs. In Hal's case, his former partner Jodie has no recognition of her childcare responsibilities and so is unable to claim Housing Benefit for two-bedroom accommodation as she is classed as being a single person. In Martin's case, although he does not claim any benefits, his income is modest and as a result of the divorce settlement, he now rents a one bedroom flat, his ex-wife having stayed in the three-bedroom family home. Both Martin and Jodie sleep in the living room when their children are with them.

For these parents, making their children feel 'at home' is an important factor in the facilitation of shared residence. As Neale *et al.* (2003: 906) remind us in their study of childrens' experiences of shared residence: 'The elements that contributed to children feeling positive about shared residence were situations where: ... children could feel settled or felt truly at home in both households'. Neale *et al.* (ibid.: 907) cite an example of 'a father [who] kept his clothes and office things in the room his son was meant to have as a bedroom. This contributed to the feeling that he was just a lodger.' While the type of housing a parent might have may be just one aspect of why a child might feel like a visitor or lodger, and may not be as vital when children are much younger (as in Woody's case), it is nevertheless likely that as a child grows older, the feeling of displacing one's parent from their bedroom each time they come to stay (as in Gavin's case) may not be conducive to positive feelings from the children about their 'other' home.

It should be noted that Hal's case has been cited here not only to highlight the plight of his ex-partner Jodie in relation to a lack of childcare recognition, but also to show that Hal's experience, as the parent in receipt of family benefits, may resemble those of many 'resident' mothers, who may well sympathise with the plight of their ex-partner, but not be in a position to help or provide alternative solutions. As Hal indicates in

relation to Housing Benefit: ‘...you can’t win because if she gets it then I lose it, and I wouldn’t be able to afford to stay here.’

It is also of note that Martin went on to reveal the fact that he had two step-daughters that he had brought up from an early age and whom he no longer sees. While Martin cited his step-daughters loyalty towards their mother as the main reason for this, the extent to which a lack of suitable accommodation for them to stay overnight and generally consider a second home played in the eventual erosion of their relationship is difficult to say.

As a final example, Steve described how housing issues could play a crucial part in any financial settlement. Not only did he feel that the division of assets being put forward by his ex-wife’s solicitor was so poor he had no option but to fight it, but that housing issues had played a big part in other fathers he knew ending up losing contact with their children:

What it meant was, even if you look at it as you should do, from the welfare point of the children, that I had no home to offer them, you know, so they, you know, I end up in some hovel that they don’t want to come to and they end up getting bored ’cause I’ve got nothing to give them, and, em, you know, and no money to look after them, and I earn a good salary! I mean, if you didn’t, you know, blokes that earn half my salary would be in real shtuuk, ... em, and they are, you know, a number of guys I know have lost contact with their kids.

What becomes clear from the father’s narratives is that when couples separate, a gendered division of parents into carer and provider can often result in little account being taken of the housing needs of ‘two’ families. This focus on the childcare needs of one parent alone can in some measure be seen to militate against the option of shared residence as a viable way forward for separating couples. This situation is now changing in France with the introduction of measures that take account of the resource ceilings of both separated parents who have responsibility for housing their children. These measures apply in respect of access to (affordable) social housing as well as to financial assistance within the private rented sector (see Ch. 4 for further discussion).

## Schools and parents

This section of the chapter examines fathers' contact and involvement with their child(ren)'s schools by looking at two aspects of parental recognition for respondents: first, *official* recognition, which looks specifically at fathers' experiences of school policies and practices and asks what rights fathers had when it came to the schooling of their children; whether for example, both parents had an automatic right to be kept informed by the school of certain events, newsletters, school reports and so on; and secondly, *cultural* recognition, by examining respondent's involvement in their wider school communities and how this impacted on arrangements.

### Official recognition

Since 1993, all parents in France have had the right to be informed of their children's academic progress, whether they live with their children or not. However, since 2002 schools in France have undergone a radical departure from previous policy by putting in place concrete measures to facilitate the exercise in common of *l'autorité parentale* (parental responsibility). This has involved changing administrative procedures and setting up an administrative formula for collecting the necessary inscription information of children at the school and within the local authority. Both parents are now required to provide their addresses and contact details at the start of each school year in cases of parental separation in order that each parent receives all documentation relating to the schooling of their children; for example, through school bulletins, notes, decisions and guidance. In theory, each individual parent now has an equal 'voice' within the school – '*Un parent, une voix, un établissement*' – even where parents are living apart from each other. They are equally eligible to stand as school candidates in whatever capacity.

In Britain, no such obligation exists to provide the details of each parent or to send out all relevant information to them both. Although schools are now required to provide such information where it has been specifically requested by the 'non-resident' parent (see Ch. 4 for further details), no respondents who talked about these issues appeared aware of such a right. As a consequence, respondents in the British sample found that they had to work very closely with their ex-partner and be proactive in their relationship with the school in order to make sure that each parent was kept up-to-date on

developments in their children's school lives. Many fathers spoke of how they or the children's mothers would photocopy school correspondence and pass this on or simply leave the relevant information in the child's school bag for the other parent to read. The upshot was that both parents would generally be mindful of keeping each other 'in-the-loop'; as Richard highlights:

There are some technical difficulties [with information not arriving], depending on whose house the kids are going to on the day the note gets put in the school bag. Sometimes! But then again, that happens a couple of times and um, any parents who are working together, truly working together in the interests of the children, one will either phone the other and say, I've got this note, um, do you know about such and such? Or they'll photocopy it and give it to the other. Or now what we've done is we've given the school a whole bunch of self-addressed envelopes, and so on days when the newsletters go out they just make sure that we both get one.

This example shows how existing policies regarding school correspondence can be worked with quite straightforwardly where parents work well together. Nevertheless, where little communication took place between parents and neither made any attempt to include the other in information sharing, good personal relationships with the school then appeared to play a crucial role. For example, Richard was not alone in providing his children's school with stamped addressed envelopes, as Martin reveals:

I supply them with self-addressed stamped envelopes so they send me any letters that should be going home. I also make sure that the secretaries know, so that I make sure that anything that's gone missing, that I haven't heard about, they let me know. [...] The secretaries don't always remember to send me everything. They're pretty good but they don't remember everything, but luckily because I know people there, you know, I keep tabs with what's going on at the school.

Surprisingly, no respondents commented on email as being a potential source of information from the school. It may well be that certain information, such as school newsletters were available on-line and that respondents had been unaware of this facility or not had access to email themselves. It may also be likely that since the majority of children were of junior school age, email had not been established as an appropriate method of correspondence as readily as have senior schools in more recent years.

### **Cultural recognition and notions of ‘display’**

In the context of shared residence, schools and school policies are of crucial importance because they are the sites where competing elements of parenthood are played out. The extent to which either parent is involved can be significant for the child, the parents themselves and indeed the school members of staff. In the context of divorce and parental separation, teachers are increasingly faced by two separate and individual parents (often in the context of wider family groups) wishing to be informed of their children’s activities and, to differing extents, wishing to be involved in their school lives. Sometimes this will work itself out in a natural progression while at other times it can be problematic.

For Martin, who has weekend contact and sees his son on Wednesdays in the school week, his involvement in school plays, fairs, fundraising events, and so on, symbolises his ‘normal’ family life that he sees himself in a continual process of protecting. Because Martin sees his ex-wife Jenny as the person who, to some extent, is denying Woddy and himself their ‘normal family life’ (for a further discussion of their parental relationship see Ch. 7), by limiting the contact he and Woody have during the school week, it is perhaps inevitable that he will compete with her where he can to show publicly that he is Woody’s father and that they are also a strong family unit:

As soon as he got to school, I got very involved with the Parent–Teacher Association, so I’m now the treasurer of that. I make sure I’m visible there, people know me and I make sure I keep in touch with what’s going on. So I’ve organised events, charity events for the school and I get involved with the school fairs, and the shows and what have you ... With the shows, I always get involved with the PTA so that we’re selling raffle tickets and what-have-you, and I’ll get my ticket independently of Jenny. Jenny can get her ticket and I’ll get mine.

It may be useful, at this point, to bring in the notion of ‘displaying’ as well as ‘doing’ family (Finch, 2007). This may not only help us to better understand Martin’s involvement in his son’s school life, but can add a significant dimension to the analysis of fathers narratives within the study more generally. ‘Display’, Finch (2007: 67) tells us, ‘is the process by which individuals, and groups of individuals, convey to each other

and to relevant audiences that certain of their actions do constitute “doing family things” and thereby confirm these relationships are “family” relationships.’

Within the context of parental separation, it is likely that these acts of display may become more pronounced for either one or both parents, since the ontological security that parents may possess within ‘intact’ couple families will to some extent have been eroded. This may necessitate a re-carving of their roles and identities as social actors within new frameworks of what it means to be a family.

There are certainly indications that for respondents in this particular study, their ‘family lives’, relative to the amount and quality of care giving their children receive, has not changed markedly post separation to what it had been prior to the split. Nevertheless, extra pressure is likely to be placed upon parents to show publicly that they are both competent and committed carers of their children and thereby seek a renewed legitimacy of their identity as ‘parents’. This ‘legitimacy’ may also be of particular significance within the context of parental separation given the structural pressures that exist for parents to nominate a principal or primary carer and where parents become involved in a dispute over residence. However, it is also likely that structural and, indeed, social pressures that exist within wider social communities may mean that the opportunities for ‘displaying families’ are somewhat context dependent.

### **School communities and integration**

For the majority of fathers, their experiences of school involvement as parents were on the whole positive ones. However, several fathers found that getting ‘involved’ could be quite a daunting experience. Hal, for example, described one way in which he felt excluded from the mainstream of school community life when his son began school:

When he started school an’ all, that was tough as a single dad because you could see like, right from reception class into the primary school, all the wee wifies, you know, the mothers would band together, you know, when they were dropping them off and picking the kids up an’ all that, and they get, basically, little support groups going, you know, and they all babysit for each other, and round for coffee an’ all this ...[and] you’re excluded from that. ’Cause even if you do sort of crack in with them and get friendly, then, err, their spouses ’ll see you as a kind of threat, sort of

thing, and that sort of thing happens, you know, so you don't sort of get involved. [...] And also, they just assume there's a wife somewhere, an' she's working an' you're looking after the kid when you drop them off, you know, an' there's a lot of assumptions.

Hal described his experiences as having been somewhat isolating and as having affected the way he participated in school life. Now his son Gavin is older, Hal concedes that he has very little contact with the school:

As little as possible, you know. If things are going fine, they're going alright then, yer, yer, he tells me about his good results. I guess he doesn't tell me about his bad ones! We just tick over, you know?

Inevitably, this aspect of school community involvement will vary from person to person, from school to school and to a great extent will be dependent on the age of the child. It could be asked however, whether more could be done to encourage fathers' participation – whether parents are separated or not – perhaps within the classroom setting, in order that they become more integrated. Kyle explained how despite being, in his words, 'the primary carer' of his son in the initial stages following separation, he was often made to feel uncomfortable in his role as a parent and as a father by other mothers at the school:

There's a couple of mums at the school, er and I was saying about this disbelief of a father taking on, you know, the [primary care giving] role. It's just an absolute astonishment to them [...] And there's some that just, I feel, I don't know if it's just me but I feel that it's just like they don't want to associate with you! It's almost like a sort of cold shoulder. A sort of a ... 'That can't be right!'

Kyle also explained how these feelings had not just been restricted to the school gate. He described how he and his ex-wife would both attend parent-teacher evenings together, even before a shared residence arrangement had been established and Kyle was looking after their son for the majority of the time. He described how this had often led to making him feel quite uncomfortable:



I suppose for a lot of people they instantly look to the mum as being the primary carer, it's automatic isn't it? you know, but er, these are changing times. A couple of times at school, one of the teachers, I remember the teacher looking continuously at Freya ... directing all the questions [to her] you know ... and I felt completely left out! And I felt absolutely distraught about it!

## **Paid employment and responsibility for childcare**

The relationship between paid work and caring for one's children is of crucial importance within the context of shared residence, since it is often this axis which is likely to facilitate or equally militate against such arrangements. This section looks at fathers' experiences of combining paid employment and family life. The analysis explores the extent to which fathers have needed to adapt or tailor their employment practices and working hours and habits to suit their childcare responsibilities and residence arrangements and asks how amenable and understanding employers have been to such changes and the needs of fathers as carers. Differences in the way the school week is operationalised in Britain and France are also highlighted as are the use of childcare facilities.

### **Adapting working practices**

The majority of respondents described how they had needed to adapt their working lives to some degree. Indeed, most fathers highlighted how they had shaped their working practices to prioritise their family life and accommodate a shared residence arrangement. Richard reveals the extent to which some fathers were willing to go to make these changes:

One of the very important things, which is fundamental to all of this, is that I resigned my job in order to make this [arrangement] happen. ... I was a Director of a [consultancy agency], um, and I wasn't, you know, massively fulfilled but it earned a very nice salary. ... We had two houses, you know, several cars, the kids didn't want for anything and um, essentially, you know, I learnt that Kit was having the affair and was going to leave. It just catalysed some thoughts that I had in my head about where I was in terms of my career, and it brought into sharp focus what

was really most important to me. And, you know, I always knew that I was very committed to the kids. When you lose them, from the stable relationship that you've had, suddenly a job doesn't seem particularly important.

Richard went on to explain that he had now set up his own consultancy business with former work colleagues, but that several ground rules had been laid down as a precondition to starting up the business:

One of the things that was clear from the start were my personal circumstances, and my new partners who started this business with me were aware of that, and I made it clear that one of the essential ground rules was that I would have to dovetail work and family life. [...] I just let my partners know from the start, that on certain days in the week I would be wanting to drop the kids at school and/or collect them ... Eight times out of ten I drop and collect on my days. My working life is worked around them, and I'm lucky in that it means when they're in bed at 8.30 or 9 o'clock, if I have to do an extra hour or hour-and-a-half I have the flexibility to be able to do that.

What came across most strongly in fathers' accounts was their prioritisation of care over career or, indeed, financial stability. Hal, who now works as a peripatetic music teacher in schools described how paid employment had always been secondary to 'being there' for his son Gavin. Although in Hal's case, shared residence had been preceded by a lengthy period of sole residence.

The [new] job's tailored to help me get on as a single parent. [...] I didn't work for a long time, except for erm, I'd go busking a lot, you know? Also I'd do cash in hand work and whatever [and] once Gavin started school, you know, I could do a bit more of that sort of thing, but it always had to be, you know, working was always secondary to being there with Gavin, obviously! I never looked to have a childminder or anything. And then this job came along. I'd been doing voluntary work, sort of similar to what I ended up doing in the schools. ... We had like a music group here in [the town] for years, teaching kids and grown-ups, dancing an' all, and then this job came up through contacts I had, and it was perfect, because I could work in schools and be out of school when Gavin was out of school.

Finding jobs that suited their family circumstances meant that a number of fathers had taken up employment that in some capacity involved working with children. This generally enabled them to keep the same school hours as their own children. Several fathers had retrained or were in the process of retraining as teachers. Other examples included one father who now worked as a school technician and another as an *animateur* (activity group leader). Christophe, a former French postman, provides another example of a father who had found alternative employment that was more conducive to his childcare commitments. He described the way that his current job as a school sports instructor fitted around the care of his two daughters:

Mondays I work until 4.30 in the afternoon. The girls finish at 4.45, so I've got time to pick them up, you see? It's great – *le top!* ... I couldn't do it if I was still a postman! ... I think that shared residence can work when you have a certain flexibility around your work. It's a necessity, otherwise you can't [do it]. A moment arrives when *tu pêtes les plombs* [the plumbing bursts], it's too nerve racking, it's too tiring. There arrives a moment when you crack-up. It's better to see your children but see them in the best way possible, even if it's just one day but make sure that day works really well instead of going all over the place from left to right. ... [Now] I have the time I need to look after them, I'm able to pick them up nearby, it's great. For me it's the best. *La vie est belle!* There you go.

Christophe's account leaves us in no doubt that the nature and timing of one's employment is of crucial importance if one is to sustain the level of commitment needed for a shared residence arrangement to work in any reasonable fashion. He points to the need of parents to organise their working lives around their family commitments rather than the other way around. Where care arrangements are worked around paid employment, the lack of time this leaves for anything else can, he suggests, lead to great stress to the detriment of both work and family life and as a consequence militate against shared residence. David provides us with another case-in-point. In David's case, his care arrangements had also been scheduled around his work rota. Having worked for 12 years as a policeman, he described the complexities of attempting to establish care arrangements when working to a rota system:

I'd have a monthly rota, so what I used to do is get a copy of my rota from work and then I would highlight all the days that I was available to have the children. If I

was working mornings the next day I couldn't [have them] because I'd have to be up at 5 o'clock. And I would just do that for the whole month, so all my rest days, all the days when I had a shift which I didn't start till the afternoon or if I'd do a nightshift, I would highlight. And I wouldn't have a free day. I would either be working or I would have the children and that'd be it!

David, who now has his three children resident with him half the week, explained that he eventually managed to change his working practices in order to accommodate the children and a set pattern of residence:

And then I changed jobs to working 9 to 5, which made it far easier to accommodate a set pattern. And when I did that, we then got together and said, 'OK, what days is best?' 'What are we going to do?' 'How are we going to accommodate them?' [...] I was desperate to get off the shifts because I was finding it impossible to see and care for them. ... I purposely looked for jobs that were 9 to 5, or at least intermediate shifts, so they were either days or evenings because if I work evenings and finish at midnight, I can still have the children the following day, which makes it easier.

David went on to explain that he had now made the decision to retrain as a teacher in order to accommodate his care commitments more easily. This training, he conceded, would mean a substantial reduction in income. Many fathers across both sample groups explained that shared residence had made a big impact on their lives financially, for example, in terms of the amount of overtime they were able to put in as well as in terms of their career development. The above analysis reveals not only a prioritisation of fathers' family lives over work commitments but also a greater willingness to take risks, in particular, at the expense of financial security. It also became apparent that many fathers prioritised the personal care they provided for their children above seeking external childcare. Fathers appeared to place a greater value on the emotional wellbeing of their children above providing materially for them, and that this wellbeing could best be achieved by 'being there' physically for their children in a caring capacity.

### **The school week**

The hours and days within which schools operate are crucial to any discussion of paid work and childcare. They also allow us to note differences in father's practices cross-

nationally. In Britain, a working school day tends to start later and finish earlier than in France, operating from Monday through till Friday. In France, by contrast, a typical school day will be of a longer duration, starting earlier and finishing much later. In addition, lessons tend not to be scheduled for Wednesdays; although there are exceptions and some students may be expected to attend lessons on Wednesday mornings or alternatively on Saturday mornings depending on that particular school's policy. These operating hours impacted on father's decision making where respondents would invariably arrange their working lives around their childcare commitments, as Didier highlights:

In France, children [don't usually have school on Wednesdays]. My daughter, who's at junior school, doesn't have school on Wednesdays [but goes in on Saturday mornings]. My son, on the other hand, has school on Wednesday mornings but not on Saturdays. I don't work on Wednesdays any more so that I can devote myself entirely to the children. In the public sector one can work normally at 100 percent, but you can also work at 90, 80, 70 or 50 percent. I talked with my director at the time and I explained that, for family reasons, I wished to change to 80 percent. One has to make an official application. It was accepted without a problem, so today like this I have both children on Wednesdays. ... In the private sector, they don't like doing that. In a small business it's just not possible!

Here, Didier indicates that working within the public sector can more easily facilitate reducing one's hours or taking time out during the week. However, Gerard shows us how adapting one's working practices in the private sector need not be problematic. Gerard works a 35-hour week in a clothes shop in a shopping centre. His daughter moves across households every two weeks. He explained that on Wednesdays all the children (his daughter, baby son and two step-children) are at home as there is no school and that although his daughter was involved in an athletics club and played some basketball the previous year, none of the children were now involved in any activities and instead 'amused themselves':

The two weeks where [my daughter's] with me, I try and arrange it with my boss that I take those two Wednesdays as leave, because when I don't have [my daughter], my days off are usually Friday and Sunday, and when [my daughter] is

with us, I try to have the Wednesday and the Sunday because that enables me to be at home when all the kids are there.

There was certainly a strong sense among respondents that employers had been understanding to their needs as fathers. Indeed several indicated that their employers had been through a separation themselves and therefore had been particularly sympathetic. However, the level of flexibility was somewhat dependent on the particular employer and as Claude indicates, in most cases certain conditions would apply to the level of flexibility an employer would adopt:

[If there's a problem when I'm at work] it's my responsibility! In relation to work, when one of the children is sick, the school calls me and if it's my week I go there. I leave my work and go there. ... My boss knows that I've got children and when they are unwell he's very understanding. And when it's not my week, it's my ex-who takes care of it; she manages something. ... My children aren't often sick and it's usually ok, but when my children are effectively ill and I take an afternoon off, the following week I make up for the half-day that I didn't do so as to make up the hours. ... I work around forty hours a week. I can work overtime but not the week I have them.

Claude was not alone in working longer hours when the children were not with him. For many fathers, making themselves more available for their children during the periods they were together was bound up with working longer hours when the children were with their mother, as Jim highlights.

I went to my boss and said 'this is what I need to do', so the days I haven't got them I'll make up the hours. [Thursday evening they're not with me, so I work 'till eight o'clock] and on the days I do have them I leave at five o'clock, so that I can then go and pick my daughter up from an after school club.

### **Fathers' use of childcare facilities**

While extended family played some role in the care of children before and after school during the school week, surprisingly few were reliant on relatives or indeed new partners. Where fathers were unable to look after their children themselves, several

made use of before- and after-school childcare facilities (or *garderies*). In the British context, Jim's experience of using an 'after school club' was a common one:

Yer, [my daughter] goes to an after-school club twice a week and then on a Wednesday. It's a club run by the school for, you know, 'cause school finishes at three, and most people get out [of work] at half five, six o'clock, so, em, you pay for that and they'll keep them there till six o'clock.

Jim explained that he was now earning a sufficient amount to cover this type of expenditure:

I am [earning enough to cover these costs] now, but at one time I wasn't, you know ... but it's split, like I'll pay, say, I pay for the after-three club and I pay for my son's bus fare for school and then [their mother] pays for the other areas like, so it's pretty even.

Claude described how childcare facilities worked at his children's school as well as some of the other logistical factors that he had to take into consideration when organising childcare, such as distance to work. Claude's account is of particular note, since it reveals that in France, before- and after-school childcare costs are granted on a sliding scale in contrast to the UK, where a standard rate is set across the board, albeit supplemented through the childcare element of Tax Credits:

I'm a painter and decorator and work about forty hours a week. It's true that it's hard to manage, so it's for that reason that I have to try not to live too far away from where I work. ... In the morning, the schools open their doors at 7.45 a.m., so I take them at 7.45 in the morning to school. They go to the *garderie* [child minding service]; there's a paying *garderie* in the morning and in the evening. It's roughly around €100 a month, and it's relative to your salary – what you have. So the more you earn, the more you pay. ... Nowadays, I earn €15,000 net, it's calculated accordingly – it's granted on a scale. So I leave them at school at 7.45 in the morning and dash off to work. I arrive at 8h15 and finish at 5h30, then after picking them up in the evening, we do homework, we eat ... it's like that every week.

Claude also highlighted how *centres des loisirs* (activities centres) were of particular importance for fathers when their children were not at school on Wednesdays. He described how such centres work for him and his children:

There's no school on Wednesdays [and I have to work on Wednesdays, so] they go to the *centre de loisirs*. There are adults there who take care of them. There are activities: cinema, theatre, they stay in the centre and carry out activities like pottery, collage, drawing ... [but even then] I pick them up again in the evening about 6 o'clock, always at 6 o'clock. [I drop them off at 8 o'clock in the morning at the leisure centre and I go to work ... and I pick them up in the evening after work]. [...]. It's hard for the children. It's a hard pace of life.

Despite the above description from Claude and the use of childcare facilities by some respondents in order to coordinate their paid employment, an overwhelming number of fathers indicated that they had specifically organised their working lives around being there for their children physically in a caring capacity when the children were with them. This desire to make themselves available for their children did not appear to be age related, that is, the younger the child the more likely fathers were to care for their children personally rather than employ out-of-school childcare facilities. This represents one of the most intriguing aspects of respondents' management of shared residence. In both the French and British samples it appeared that fathers attached great importance to providing care themselves, with many being reluctant to use out-of-school childminding facilities, even where this would mean a reduction in family income.

## Summary

In this chapter, fathers show how the policy frameworks within which shared residence operates can produce a unique set of challenges for parents that within intact couple households may often be taken for granted. First, in terms of accessing family support mechanisms and in dealing with an administrative apparatus that insists upon a split-family–dual-roles model of post-separation family life. Secondly, in terms of their involvement in their child's schooling; and thirdly, with regard to balancing paid employment and childcare.



The notion of a primary caregiver that results from an administrative exigence for a child's principal address lies at the heart of policy management in both Britain and France. Although this administrative division is being challenged in France through policy measures aimed at supporting the underlying principle of *coparentalité* (for further discussion see Chs 2–4), for example, by opening up the possibility of sharing *allocations familiales* among parents in cases of shared residence, support for families through policy mechanisms nevertheless remains predicated upon the notion of one primary caregiver. Respondents show how this administrative division means that when couples separate, parents sharing the care and residence of their children must enter into a series of often-complex negotiations, in order to secure the recognition necessary to access support that will be of mutual benefit in the care and upbringing of their children.

The above analysis reveals that a 'residence' status is dynamic, in the sense that it can be held simultaneously by both parents according to the particular welfare or policy measure or mechanism under consideration. This dynamic nature holds particular purchase within France, where access to certain child-related welfare mechanisms or reductions in the amount of tax payable relative to the number of children a family might have are not dependent on being in receipt of family allowances as they are in Britain, where childcare recognition stems in the first instance from receipt of Child Benefit.

Equally, this status can be fluid and may change over time. In this respect, respondents point to a certain amount of *magouillage* or cunning that may be needed from parents in order to work discrete policy systems, that are generally unable to accommodate a model of family life that is spread out across households, to their advantage. For example, where there are two children, by registering one at the address of one parent and the other child at the address of the other parent for the purposes of receiving child allowances and/or tax concessions.

The fact that many parents were able to 'manage' a resident parent status to their own advantage and that of their children must lead us to ask whether the way current policies operate are not already serving separating and separated families sufficiently well. However, respondents reveal that while some parents were able to 'manage' a residence

status in the interests of their children, others could be left with no acknowledgement of their childcare needs. This could lead to great hardship for some families, in particular, as regards housing, where for low-income families neither parent could afford to be the non-resident parent for the purposes of childcare recognition.

In terms of schooling, fathers in the study tended to be proactive in establishing good links with their child(ren)'s school. For those who were unable to establish these links, their experiences were often described as being isolating ones. While some fathers had integrated very well into the wider school community, others indicated that they could feel somewhat excluded from this, as a result of which they tended to retreat from further school involvement altogether. Where fathers spoke of their relationships with their children's school as unproblematic, these particular fathers tended to have taken the primary care-giving role from an early age and were living in more urban conurbations as opposed to smaller towns and rural areas, where cultural expectations may perhaps have differed somewhat, thereby adding to a sense of isolation.

The fact that many fathers had succeeded in combining paid work with their individual shared residence arrangements should not mask the difficulties many of them faced in establishing such arrangements. A substantial proportion of respondents were in paid employment that enabled them to prioritise family life over and above their work commitments. The majority of fathers in the samples had tailored their employment patterns to suit their childcare commitments. In many cases this had been achieved through self-employment, a career move or substantially reducing their hours of work when the children were with them and increasing their hours when the children were with their mother. Most fathers who were employees, tended to work for small businesses where employers appeared to be understanding and flexible during their 'parenting period', as long as it was understood that they would make up any time missed when their children were not resident with them. Arrangements worked best where fathers had adapted their working lives to suit their childcare arrangements rather than the other way around.

A number of fathers indicated that they had taken up employment opportunities that involved working directly with children or in a child-focused environment. These respondents claimed that such employment enabled them to keep the same school hours

as their children and thus helped them to be with their children during the periods of time the children were resident with them. On this note, it is worth pointing out that although before- and after-school clubs and activity centres often played a vital role in enabling fathers to balance work and family life, the majority had deliberately acted to create, where possible, the conditions in which they would be able to care for their children directly rather than employing the services of childminders or out-of-school care facilities.

What becomes clear from the analysis of more structural policy considerations is that certain social norms around family life underpin many of the day-to-day interactions that centre around the care and upbringing of children, that within intact couple households may often be taken for granted. When residence is shared in more or less equal measure these norms are challenged in ways that present a whole raft of dilemmas for the social actors involved. Old expectations and formulations that have traditionally been associated with parental separation may no longer apply in these instances, for example, as witnessed in the large numbers of cases where no child support was being paid. As we move into the final chapter, I reflect on the key findings and experiences of fathers in line with the central aims and objectives of the thesis.

# **Chapter 10**

## **Managing shared residence**

### **Introduction**

The underlying principle of ongoing contact between children and separated parents is now generally accepted as being desirable. Indeed, provided that arrangements are safe and in the ‘best interests’ of the child, there is now a widely held view that frequency and regularity of father–child contact after separation is associated with children’s psychological wellbeing. The old axiom that children need the stability of one home, though not abandoned, has also begun to be called into question. Nevertheless, the practice of shared residence is still viewed with caution among academics, policymakers, lawyers and the judiciary. Concerns centre on the way debates around shared residence tend to be framed in terms of parental rights rather than the needs of children: for example, the rights of fathers to equal parenting or the rights of mothers not to be forced to have ongoing relationships with their children’s fathers. A certain apprehension is perhaps inevitable given that such arrangements challenge the very basis upon which post-separation family life has traditionally been carried out; namely, that of a split-family–separate-roles (or primary carer) model.

Since the majority of resident parents are mothers and the majority of non-resident parents are fathers, this default model of care delivers gender-biased outcomes. In this context, fathers in particular are faced with a series of challenges in respect of adopting and managing shared residence that my thesis has sought to illuminate. In this final chapter, I summarise the key findings, point to the similarities and differences that can be discerned in approach cross-nationally in Britain and France and reflect upon these challenges in line with the central aims and objectives of the research. As well as highlighting the different ways in which fathers are parenting in multi-residence situations, I reflect upon the concept of shared residence, set out some of the implications of the findings for law, policy and practice and look at future directions for research. The chapter ends with a concluding discussion that asks whether the practice of

shared residence brings the nomenclature of a resident–non-resident parent divide into question in any meaningful way.

### **A summary of key findings arising from the study**

Reflecting upon what helps and what hinders fathers in managing shared residence, it is important to bear in mind that the nature of the sampling criteria has meant that all respondents – whatever their views, practices, fears and aspirations – have managed to adopt and sustain a ‘working’ arrangement. For example, it is clear from the relational analysis provided in Chapter 7 that it is not a precondition that parents get on well with each other or adopt high-level communication strategies for shared residence to take place. Therefore, we must not assume that there exists a cut-and-dried set of conditions that specifically favour a shared residence outcome. Instead, as I summarise what best facilitates this type of arrangement and what militates against it, we should consider the unique challenges that individual respondents face and the manner in which they overcome certain obstacles as providing signposts for consideration; flagging-up where fathers feel things are working well and where difficulties might lie in its operation. This section begins by looking at common features, as well as variations, among the sample groups in respect of respondent characteristics. This is followed by a consideration of the main findings with regard to the different ways in which shared residence has manifested itself and the central relational and structural dynamics that have been explored within the thesis.

#### **Common features of respondent characteristics**

The striking similarities in respondent characteristics that were found among the two sample groups may indicate a stronger propensity for shared residence to take place where certain fundamental or ‘core’ criteria are met. Taking care not to extrapolate too strongly from the qualitative data, some common patterns can be identified. On the whole, fathers in both groups were aged in their 30s and 40s, were in paid employment and currently single. The only notable difference was that, in contrast to the majority of British fathers who had been previously married to their children’s mothers, slightly more of the French respondents had been cohabiting. The number of children parents had and their ages at the time of separation also appear to have been strong contributory

factors in facilitating such arrangements, as was the geographical proximity of homes. This was reflected in the fact that the majority of children in both sample groups had been under the age of 11 when they first began alternating their residence, that respondents rarely had more than two children and that parents tended to live within a five-mile radius of each other; many of these within 'walking distance'. Also of note, was the high proportion of fathers in both samples claiming that the mothers had initiated the breakdown of the relationship. This could suggest that the manner in which these partnerships ended may have played a part in any consequent consideration and negotiation of care arrangements; specifically, with regard to the mothers' amenability towards shared residence.

Finally, the overwhelming majority of fathers in both sample groups claimed to have played a central role in the day-to-day care of their children prior to the parents' separation. This must lead us to ask whether shared residence is a more likely outcome where the father-child relationship has previously been imbued with high levels of active parenting. It is notable, that strong care roles were apparent regardless of whether subsequent arrangements had been made privately or through a legal dispute mediated through lawyers or the family courts.

Recent research by the French family sociologists Cardia-Vonèche and Bastard (2007), suggests that the way parents function after separation is very much related to the way they functioned during the partnership, rather than whether or not they remain amicable after separation. This, the authors conclude, goes some way to explaining why patterns of contact remain so variable, despite the growing consensus that parents should retain strong ongoing relationships with their children after separation.

However, while findings from the current study linking high levels of involved parenting pre- and post-separation appears to lend further legitimacy to such claims, I believe we should be cautious in assigning any causal relationship too readily. In the first instance, pre-separation involvement cannot predict the quality of fathering involvement post-separation (Lamb, 1999). Secondly, if families do make arrangements that reflect normative levels of pre-separation involvement with parents, resulting in children usually living with their mothers and having varying degrees of contact with their fathers, this does not explain why children will still tend to live with their mothers

and have varying degrees of contact with their father where levels of pre-separation involvement are reversed. Indeed, from an analysis of the data it is possible to speculate that where fathers have taken on a primary care-giving role prior to parental separation, shared residence is more likely to be the *de facto* outcome than father-residence. Therefore, while high levels of pre-separation father–child engagement is certainly likely to assist fathers in some measure when negotiating shared residence, this should be seen as one of a range of possible contributing factors.

### **The different ways in which shared residence manifested itself**

A two-week cycle of care was the most common framework in which to organise parenting schedules in both Britain and France. However, French parents tended to adopt significantly longer blocks of time with their children than their British counterparts; the majority of arrangements falling into an alternate weeks pattern of care in France, while in Britain they were more often split into a series of shorter blocks over the two-week cycle. From what evidence there is available, these differences in care patterns are borne out in wider British and French research (cf. Bradshaw *et al.*, 1999; Moreau *et al.*, 2004). While fathers revealed a great diversity within these ‘cycles’ of care, not only in the days on which the changeovers occurred but also in their timing and logistics, in the main, they reflected the needs of all family members for consistency and a comprehensible rhythm.

Crucially, parenting schedules were not static, often evolving through their own dynamic and occasionally involving several different formulations over time. Respondents could also have several residence arrangements running in parallel, adding a certain intricacy to already complex arrangements. The nature of family recomposition, in particular, meant that parents were often subject to a series of parallel commitments. Nevertheless, the levels of contact children had with both parents tended to remain consistent – that is, shared in the sense of continuing to operate within the 30–70 percent spectrum of residence over the year criteria set out for this study.

While a group of fathers have been identified who had taken on the primary caregiving role prior to the start of shared residence, these numbered only five at three months post-separation and just three at six months post-separation. In two instances, the lengthy periods of ‘lone parenthood’ that preceded shared residence (6 years and 2 years

respectively) could be explained in part by the mothers' inability to provide an adequate level of caregiving, given a series of drug and alcohol related problems. These issues were eventually resolved and led to the shared residence of their children. However, for the other *de facto* lone fathers in this group, there was little to separate their circumstances from many other fathers in the two sample groups. As such, it is unlikely that they represent a unique sub-sample of fathers, other than in respect of their initial primary caregiving role prior to the start of shared residence.

### **Negotiating shared residence: personal histories**

Two factors appeared to contribute, in particular, to the successful negotiation of shared residence between parents: first, a mutual respect by each parent for the other's parental role, which included a recognition that each would continue to play a central part – emotionally and instrumentally – in the children's lives; and secondly, an acceptance by both parents that their former partner now had a separate life and that any ongoing relationship would centre solely around the upbringing of the children. Nevertheless, despite a mutual acceptance of the involvement of the other parent in a care capacity, shared residence does not appear to require unusually high levels of cooperative working among separated parents. Of central significance in the data were the two major differences in parenting relationships that could be discerned among respondents: first, *cooperative co-parenting*, reflected in some form of working parental relationship; and secondly, *parallel parenting*, where little or no communication took place between them, each essentially doing their own thing.

Fathers generally found that good communication was healthy not only for practical reasons but that it could also have a knock-on effect on their children's wellbeing. However, while more parallel parenting approaches could suggest greater underlying conflict or tension between parents that might act to militate against 'working' arrangements, for some parents it represented a useful means by which to facilitate shared residence through reducing the opportunities for flashpoints and thereby avoid any potential conflict. In this sense, parents could be seen to be acting both rationally and responsibly, reducing any adverse affect of the parental relationship on the child and thereby acting in their children's best interests. In this context, we should be wary in assigning any underlying 'good' or 'bad' status to one approach over the other. Moreover, these approaches were not set in stone, with parallel parenting often leading



to more cooperative approaches over time, highlighting the need for a period of time – or ‘bedding down’ – within which parents could come to terms with the nature of events without setting parents in opposition to each other.

Other important and related aspects of the findings included striking a balance in the extent to which children would integrate the two halves of their home life. It was of particular importance to fathers that the children had a sense of ownership over their two worlds and that any integration should generally be led by the children themselves. This required that parents be open and responsive to their children’s needs, which could change over time. Fathers also identified consistency in arrangements combined with an ability to be flexible where needed and remaining committed to establishing shared residence where it had not been in place from the outset.

Where fathers had repartnered in the context of further children and/or step-children, they often identified a need to nurture the core biological family unit within the wider one. Providing time and space for each genetic set of siblings to establish their own unique identity could act to dispel any sense their children might have of being ‘visitors’ in the house, where respondent’s own children might spend less time resident with them than their new partners’ children. The point was also raised that where two families had ‘come together’, having different arrangements for different sets of step-siblings could also help to facilitate the arrangement, in the sense that the children were not constantly getting ‘under each other’s feet’. This was seen as healthy and thereby worked to sustain the arrangement. There was a general sense that relationships between these groups of children had to be handled with tact and care.

The levels to which children were actively engaged in decision making with respect to their care arrangements appeared to be minimal. This can be explained, in large part, by their very young ages at separation. However, fathers also claimed that children needed to feel included in the way events unfolded. The British sample revealed a greater willingness to let their children participate in decision making as they got older and talked of the potential need to reassess arrangements in light of their age and circumstances. However, while French fathers talked less about these issues, they were no less prepared to involve them in decision-making processes. It is also possible to speculate that the longer periods of residence that the children were subject to in France,

meant that more satisfactory arrangements had already been met, thus negating the need to alter arrangements as they got older.

Given the highly individualised personal histories of respondents, an absence of any striking cross-national differences with regard to relational issues has not been surprising. It should, however, act to draw our attention in greater measure to the similarities that have been drawn out in the fathers' narratives.

### **Private agreements and legal proceedings**

While three-quarters of the British sample had arranged things privately, without recourse to lawyers or the family courts, the French sample was more evenly split. However, many more fathers in the British sample indicated that they were unsatisfied with arrangements as they stood and that although arrangements had been made privately, this did not mean that they had been worked out amicably or indeed that they had been in any way negotiated.

Fathers felt vulnerable in ways they felt mothers did not have to. A particular concern fathers held was that the mothers of their children might decide to move away from the area, thereby making it difficult to maintain a shared residence arrangement. This vulnerability was often reflected in 'defensive measures' such as record keeping and in the desire for some form of concrete court order, which, they felt, could provide them with a sense of 'certainty' and security in the arrangements they made.

In terms of their awareness and understanding of the legal system, it was clear that the majority of fathers across both samples felt unsure of their rights and had little knowledge of the legal process. Indeed, there were clear disparities between what fathers (and apparently mothers) thought could be achieved in law and the law as it really stood. While British fathers felt that solicitors had generally been unhelpful, the French sample were not as disparaging about their lawyers. However, several still found that they could be anything but helpful with regard to pursuing shared residence, often actively advising against it. The idea that shared residence was 'just not an option' among lawyers and the judiciary was prevalent in fathers' accounts across the board. Indeed, no shared residence orders were made through the family courts within the

British context, even where such orders had been agreed upon by the parents themselves.

A fine line appeared to separate those parents who managed to make arrangements privately from those who went to court. Fathers would invariably become involved in the legal process as a last resort. This was particularly the case where fathers felt that their children were being used as a point of control and that the fundamental rights of the children were not being respected. This would be reflected, for example, in no holiday contact, by imposing what they saw as unreasonable conditions on where and how they could see the children and in the arbitrary refusal of access.

Where fathers do go to court, there appears to be a tendency to think of these cases as being somehow deviant. What fathers reveal in these accounts is that the key element in determining their approach appears to rest on whether or not a full and ongoing relationship with their children can be established. In this sense, many fathers who go to court vary very little from those who have made arrangements privately. That said, other factors also played a part in fathers' decision making. For some, the desire for certainty in arrangements led them to seek a court order. For others, particularly those lacking parental responsibility for their children, feelings of vulnerability led to a desire to avoid conflict and confrontation at all costs. While some fathers wished to avoid excessive legal costs, many more had been put off the idea of going through legal channels by the advice and experience of others. More generally, while legal proceedings did not necessarily help respondents to increase their contact with their children, they nevertheless felt they were able to establish some certainty and control over their lives and in their relationships with their children.

In terms of mediation and conciliation processes, fathers felt this environment offered them a forum in which their voices and opinions were listened to and valued, and a venue in which they felt they were treated as equals. Some fathers appeared to find it helpful in enabling them to move on, in emotional terms, from past relationships and what, for many, had felt like a bereavement. This could feed into the way arrangements developed and thereby indirectly act to facilitate more shared care approaches. Fathers could often feel vulnerable, ill-informed and illegitimate clients of the legal system and some who got the opportunity, appreciated being listened to in mediation. With regard to

their legal position, this suggests that to some extent what fathers needed was greater information and support.

Finally, many arrangements made privately within the context of French family law were, nevertheless, required to be passed before a judge for approval, even where parents had not been married and had been in agreement over arrangements. While this did not require parents to attend court, it nevertheless appears to represent a major departure in the way 'private ordering' is conceived in France, in contrast to Britain, where unmarried parents have little or no dealings with legal officers where they are in agreement over arrangements. A more interventionist approach in France may go some way to explaining the lower propensity for private ordering among the French sample. Since court involvement appears to be a more standard or 'normalised' part of the process of negotiating post-separation parenting arrangements, it is possible that a greater inclination to use the court may exist more generally.

### **Shared residence and policy**

Respondents reveal that the registered address of the child can vary according to the particular welfare mechanism or policy measure under consideration. In this sense, the 'official' residence of the child is dynamic. Where parents were able to negotiate to work their respective systems to their own advantage, this could facilitate the arrangement both directly and indirectly. However, where this was not possible, an administrative apparatus that was unable to accommodate the lived reality of families' lives could act to disadvantage fathers in a multitude of ways and thereby act to hinder the management of such arrangements.

Issues of housing and social security benefits emerged as particular dilemmas for fathers and, indeed, for mothers where they were the non-resident parent for the purposes of childcare recognition. Several respondents highlighted how a non-resident status could cause particular problems where they were either not in receipt of family allowances and/or had lost access to the family home, for example, through a divorce settlement. Respondents also highlighted how non-resident parents on low-incomes may find the practice of shared residence particularly hard where large families are concerned.

Very real issues of affordability appear to exist in relation to the practice of shared residence given the fact that suitable accommodation needs to be found by both parents. The receipt of benefits and child support maintenance can confer a real benefit on the parent who is treated as the main carer. However, it appears that over half of all respondents in both sample groups were not paying any maintenance. Nevertheless, a central resident–non-resident division among separated parents in policy terms could act to influence the way parents proceeded, inasmuch as needing to establish themselves as the primary carer. In this sense, such a division can act to militate against shared residence and hinder the swift resolution of residence issues more generally.

Finally, fathers' work practices enabled them to prioritise family life over and above work commitments. Indeed, most fathers had actively tailored their employment patterns to suit their childcare responsibilities. Moreover, fathers were reluctant to use childcare facilities, preferring to care for their children personally where this was possible. Where the reverse was true and fathers worked their care arrangement around their working practices, this could lead to high levels of stress and act against the quality of care provided and consequently the shared nature of the care arrangement. Fathers appeared to prize being there in a care-role capacity above financial stability; which could often involve a certain amount of risk taking. For these fathers, a breadwinner role would appear to be a somewhat hollow exercise if not part and parcel of a broader family life. This must make us look again at notions that fathers' lives are centrally located in the public sphere.

### **Cross-national similarities and differences in approach: highlighting the limitations and strengths of the research**

A comparative research design has not only allowed us to discover how shared residence manifests itself within different national settings, it has also enabled us to see how different countries are responding to such developments. The fact that fathers' accounts within the French sample do not reflect first hand experiences of how the 2002 reforms of parental authority have impacted on the negotiation and management of shared residence is certainly a limitation of the research. However, given that fathers'

characteristics and accounts within the two sample groups bear such striking similarities, this makes the differences in legislative responses all the more pertinent.

Indeed, the overriding similarities in fathers' experiences that have been established through the qualitative data, mean that we are arguably presented with two ideally matched 'control groups' from which to go on to assess the impact of policy measures aimed specifically at supporting co-parenthood post-separation. The fact that shared residence is now an explicit option for separating families within France and, perhaps more importantly, that this option is now supported through radical policy measures aimed at underpinning the notion of *coparentalité* – for example, a greater recognition of the housing needs of both separated parents together with the possibility of sharing family allowances – makes it likely that, given time, we should start to discern differences in the make-up, characteristics and experiences of both fathers and families opting for shared residence.

We would, for example, expect to find an increase in the numbers of younger parents and those on lower-incomes with shared residence. It is also possible that the numbers of children with such arrangements in any one family group may also increase, given that the pro-natalist approach adopted in France more generally is now extended to post-separation situations. In this way, we will be able to establish with more certainty the nature of the structural barriers affecting fathers and families adopting (or seeking to adopt) shared residence within the British context and the precise nature of any discrimination faced by them. While, at this stage we are able to theorise about the likely differences in outcomes – both cultural as well as structural – that we are likely to encounter, it will also be crucial to carry out further interviews with French fathers once these changes have had some time to become embedded.

### **Shared residence: a presumption or an option?**

In France, the recent 2002 reforms of parental authority now provide for the possibility of shared residence. While no presumption of shared residence exists it is nevertheless now recognised within French family law as a legitimate option, challenging the very heart of post-separation family practices through explicitly questioning a 'default' primary carer model. Parents now have the right to ask specifically for shared residence

as a preferred arrangement, even when one parent is not in agreement; with the judge able to order a trial period. This contrasts starkly with the British context, where an emphasis is placed squarely on private ordering alongside a primary carer model and the use of such orders remains infrequent. By setting this option on an equal footing to a primary carer model, a ‘no one size fits all’ philosophy still prevails in France, yet simultaneously undercuts any discrimination that may exist against a shared residence model. This arguably allows for a period of ‘bedding down’ without setting parents in opposition to each other (crucial, given the nature of parental separation), for example, by taking up opposing positions in order to establish themselves as the resident parent. Consequently, it sends a message that no one parent will automatically become the primary carer. This may lead to an increase in parents considering shared residence as a realistic option in France and, as a result, be less likely to embark upon a dispute about residence.

In France, debates around shared residence prior to the 2002 reforms were centred on whether it should be afforded the same legitimacy as other models of contact. As such, they were based upon a conceptualisation of the relationship between parent and child that argues for the provision of help and support in maintaining this relationship even where there is no common household. As a result, shared residence has become an explicit choice for separating families. In the British context, by contrast, debates have been framed in an altogether different way, instead centring around whether or not a presumption of shared residence should be made in law (DfES, DCA and DTI, 2004; 2005). Subsequently being rejected as being ‘impracticable’, framing the argument as a straightforward either–or solution to such a complex set of dilemmas has arguably not been helpful. Rather than addressing any long-term issues – or finding any long-term solutions – surrounding this practice, they have instead been bypassed, with the likely consequence of storing up problems for the future. As such, within the British context, shared residence is likely to remain something of a proverbial ‘elephant in the room’.

In the British context, shared residence is not yet being considered as an acceptable alternative or addition to a residence–contact model, even where the differences between these modes of post-separation family life are becoming increasingly marginal. Instead, recent UK debates in family law have focused on granting the courts more flexible powers to facilitate child contact and enforce contact orders (the *Children and Adoption*

*Bill*, 2005). This has resulted in new provisions being enacted in the *Children and Adoption Act* 2006, which received royal assent in June 2006, and includes imposing an unpaid work requirement on the person who breaches a contact order and the requirement of paying financial compensation. The key principle that children benefit from contact with both parents remains, though a presumption of equal contact was rejected, being deemed impractical.

In large part, this rejection can also be seen as due to the desirability of such arrangements being tied to high levels of cooperation between parents, which belies an assumption that shared residence will be difficult for adults (and their children) who do not conform to a very specific notion of a cooperative co-parenting ideal. However, as we have seen from the qualitative data, such cooperative working is by no means a defining feature of shared residence families. Moreover, the rejection of such a model is also due to the overriding principle of non-intervention through private ordering, making the use of such orders somewhat moribund. At best, such orders will continue to be used in moderation, thereby specifically undermining what fathers themselves appear to wish for, namely, a sense of legitimacy as equal partners in the upbringing of their children through the ‘certainty’ they feel such orders can bring.

It is not surprising, therefore, that of the total number of respondents in the British sample, of whom roughly one quarter had followed some form of legal proceedings, nowhere was an order for shared residence made, even in situations where parents had agreed to one in a consent order. It is possible to speculate that if consent orders are now being used to settle the question of where a child is to live, they may be the nearest many parents will get to officially establishing shared residence through family law. This is likely to mask the levels to which parents are desirous of shared residence and the extent to which *de facto* shared residence is taking place. In this instance, it is also likely that continuing to use such orders in moderation may be acting to influence not only the perceptions of the variety of family professionals engaged in such matters, for example, legal advisors and welfare officers, but also parents themselves.

Within the UK, policy continues to operate exclusively within a primary carer framework that delivers gender-biased outcomes by leaving a split-family–separate-roles model of post-separation family life intact. Predicated upon a lone–absent parent



divide, this does little to open up the possibilities of alternative ways of approaching post-separation family life. Acknowledging the fact that where parents do not live together shared residence represents a lived reality for a substantial number of separated and separating families, may require a new approach that affords some recognition of the childcare needs of both parents. This would legitimise families on a needs criterion rather than whether or not they hold a primary carer status; which at present can act to support one family group while simultaneously disenfranchising another. Whether the status quo will remain sustainable in the British context in the face of rising numbers of shared residence households waits to be seen.

### **Reflections on the research**

Before taking a final look at the research and policy implications, it is important to reflect briefly on how the methodology adopted may have had a bearing on the research findings. As regards the sample, there were some clear similarities between the two groups of respondents in Britain and France. This might suggest that fathers with shared residence are a particular sub-group, being more likely to exhibit certain common characteristics. For example, the large numbers of fathers claiming to have played a central role in the care and upbringing of their children prior to separation may suggest that shared residence is a more likely outcome where father–child relationships have previously been imbued with high levels of active parenting. However, we should be wary of extrapolating these findings in such a way, given that this is a small qualitative study which has used a snowballing method of generating the sample. This issue would merit further research.

The study also raises some issues about the concept of shared residence. For this research, it was defined in terms of time spent in each household (a minimum of 30% over a year). Other definitions would have been possible, as discussed in Chapter five. However, the key issue is not the precise definition but whether or not there is any value in the concept of shared residence itself. I would argue that this research shows that this is a useful concept, with particular characteristics that include the fathers' apparent commitment to shared residence; witnessed in their determination to make it work even in the face of sometimes less than helpful structural (legal and policy) considerations.

The concept of shared residence is also multi-layered; not so much ephemeral as dynamic over time. However, this is arguably the case for many family forms and therefore shared residence can be seen to represent one aspect of the dynamism of modern families and family life. Nevertheless, it is important to recognise that shared residence can be viewed through different lenses, depending on whether it is considered as a discourse, an aspiration, a family practice, a political tool, an administrative framework, a judicial decision or an ideology. In this sense, one needs to be aware of the multi-dimensional character of such arrangements when considering the policy implications of the study and future directions for research in this field.

## **Implications for law, policy and practice and directions for future research**

In light of the above research findings, certain key challenges present themselves for consideration in terms of the development of law, policy and practice. Equally, these challenges indicate the direction in which research should now be focused. As such, these two aspects are here approached in tandem.

### **Identifying shared residence and why this matters**

The first issue I would like to address is one of legitimacy. Underpinning this research has been a desire to provide a clearer picture of what shared residence looks like, how it manifests itself and what differentiates this model of post-separation care from any other. This is of particular importance given that a growing body of evidence suggests that it is the ‘quality’ rather than the ‘quantity’ of parent–child relationships on which research should be focused (Amato and Gilbreth, 1999; Neale *et al.*, 2003). As Smart *et al.* (2001: 126) conclude in their recent study of childrens’ experiences of post-parental separation, ‘Co-parenting [...] is a measure of the quality of relationships, not just a measure of time and place’. Arguably, this focus should not deflect our attention from exploring different models of care; indeed, we should be mindful that the ‘quality’ of parent–child relationships is an issue that should be pursued regardless of what the particular model of care might be, extending to intact or ‘original’ couple households. Instead, fathers’ accounts show how these relationships take place within different

relational and structural frameworks that also need to be understood if we are to respond adequately to children's needs. Where care is shared in roughly equal measure, a default primary carer model of post-separation family life that lies at the heart of policy management may act to disenfranchise not only the non-resident parent but also other members of that household, not least the children. A lack of recognition of childcare responsibilities can lead to multiple levels of disadvantage that can be particularly acute within low-income families.

This may necessitate a revision of the way we conceptualise shared residence as a social category. Affichard *et al.* (1998: 32), explain that 'At European level, interest in the socio-economic consequences of family breakdown and new forms of private life justifies the search for new social indicators'. Thus far, the significance of trends towards family recomposition has been somewhat obscured in the findings of generalised surveys. Policy indicators measuring rates of divorce, lone parenthood and extramarital births at the moment provide only an indirect and incomplete measurement. The existence of biological parenting of children across households needs to be taken into account in a more nuanced way.

Moreover, since language does not simply reflect or describe reality, but plays an intrinsic part in its construction (Fairclough, 1992), perhaps a greater recognition of such arrangements is called for within social discourse. This would lend greater legitimacy to the lives of these families. Smart *et al.* (2001: 125), have argued that 'no exact definition ... can be safely imposed upon the range of flexible arrangements that parents and children adopt over time'. However, through the accounts of fathers practising shared residence, we are able to discern that while actual 'cycles' of care and parenting schedules themselves are various and might change over time, there nevertheless remains a recognisable form of family life where actual levels of care tend to remain consistent – that is, where the residence of the children is shared. It becomes important, therefore, that attention is paid by policymakers and through research into such arrangements and perhaps in particular into finding ways of measuring their incidence as a matter of urgency, thereby recognising that families are extended and extending across households and account needs to be taken of this if we are not to unwittingly discriminate against this model of family life as a viable option for separating families.

### **The dangers of becoming too prescriptive**

There are certainly sound reasons for arguing that shared residence should be considered as a ‘new’ and distinct social category of analysis in its own right and, moreover, that such a model should become included as a matter of course in the development of social indicators within poverty and living standards research, income and expenditure surveys and household indexes more generally. However, there are potential problems inherent in attempting to define shared residence over and above any specific determination of the actual levels of care – in percentage terms over the year – that may be considered appropriate, which leads me to a second and related issue; namely, one of classification.

Being able to clearly identify shared residence as a distinct model of post-separation care may well help to assist families and facilitate the development of policy in the future, where this is appropriate. However, the danger is ever present that as judges and policymakers attempt to pin-down what constitutes such arrangements and what does not, its classification may become overly prescriptive. We need only to look at the prevalence of an alternate-weeks model of care in the French sample and in wider French judicial statistics to suggest that shared residence may, to some extent, have become equated with such a model in France. Whether this is the result of public preferences having become reflected in judicial decision making or whether judicial decision making has come to influence the way couples proceed represents an important topic for further research, not least, as it has the potential to offer wider explanatory power when exploring the nature of the relationship between parents, children and the state.

The dangers of becoming overly prescriptive are clear when we look at the differences in the ways in which patterns of care have manifested themselves within the two sample groups; namely, through the adoption of shorter and longer blocks of residence respectively. These differences point to the need for flexibility in terms of definition as well as judgement on the part of parents. The fathers’ accounts have shown us that there are no categorical rights or wrongs in approach. Therefore, a major challenge for law, policy and practice alike resides in resisting the temptation to become overly prescriptive in setting definitions that favour a particular model of care, however

attractive an option this might seem. It will be equally important not to impose any subjective judgements on one type of arrangement over another, particularly since cross-national differences can be seen in part as resulting from differences in attitude regarding the psychological wellbeing of the children. Patterns of care were dependent on a multitude of factors and often developed through a process of trial and error, indicating that parents themselves are likely to be the best judge of their own family circumstances and the needs of their children at different stages of their development.

### **A trial period: by what criteria?**

Crucially, *la loi du 4 mars 2002* (Art. 373-3-9) provides that in the case of disagreement between parents on the mode of residence for the child, the judge may, unless the interests of the child are not best served, order a *titre provisoire* (a trial period of shared residence, generally not exceeding six months), at the end of which time the judge will give a definitive statement on the residence of the child, choosing between shared residence or residence with one parent. Thus, the main change introduced by the 2002 reforms resides in the power of the judge to impose shared residence on parents who have asked for exclusive residence and to take provisional measures where necessary. Leaving to one side the controversial nature of such a measure, it should be asked whether six months represents an adequate amount of time in which to assess the workability of such arrangements. This is questionable in light of the qualitative data, which suggests such negotiations are more open-ended. As such, these periods of time in themselves will require close monitoring in order to gauge their impact. More importantly still, will be a need to assess the criteria by which judges deem such arrangements workable or not. This will arguably represent a vital area of socio-legal research as the full implications of the 2002 reforms unfold, not least as it will provide us with a greater insight into the ways in which conflict is measured and assessed.

Finally, in terms of future directions for research, it is important to recognise the ‘multidisciplinary’ nature of the subject matter. Shared residence and post-separation care practices more generally encompass a diverse range of disciplines that include law, social policy, social work, sociology, psychology, anthropology, gender studies and demography. It will be crucial that account is taken of the diverse range of perspectives from which to view such practices if we are to gain a rounded and holistic understanding of shared residence as it develops in the future.

Given the multi-dimensional character of shared residence, it will be important for policymakers to find ways of supporting the needs of separated parents to care equally for their children in such a way that it does not create disadvantage. Drawing on the French policy experience could help to cast some light on the policy challenges ahead.

## **Concluding discussion**

Within the contours of this thesis, my intention has been to provide the reader with a clearer picture of what shared residence looks like, identify areas of complexity within which such models are becoming established and highlight how fathers experience the management of such arrangements at the intersection of a resident–non-resident parent divide. Key findings from an analysis of the qualitative cross-national data have been outlined that point to the challenges faced by fathers and indeed mothers of parenting in multi-residence situations and those faced by family law, policy and practice as these types of arrangements become more commonplace. It remains to be asked whether the practice of shared residence brings the nomenclature of a resident–non-resident parent divide into question.

When attempting to respond to this question, it is important to recognise that these demarcations are, in the majority of cases, still reasonably clear-cut and that despite the growing consensus that parents should retain strong ongoing relationships with their children after separation, patterns of contact nevertheless remain variable. However, although still a minority practice, shared residence appears to have become a prevalent model of post separation care for substantial numbers of separating families, in spite of the relational and structural barriers that have been identified within the thesis that can act to hinder the development of such arrangements. Moreover, it is possible to speculate that a rise in numbers of non-resident mothers may additionally serve to influence the development, growth and acceptance of a shared residence model of family life.

There are likely to be consequences for the lives of children and those charged with their care. Shared residence clearly relies on certain material conditions being met. Where this proves difficult, issues of child poverty and exclusion loom large and will

need addressing. Where a resident–non-resident parent dichotomy lies at the heart of policy management, this may be particularly challenging. Such a division can act to discriminate against those currently managing shared residence as well as those families that would wish for such an arrangement but are prevented from doing so by the structural barriers such a divide creates. A growth in such practices will require a refiguring of the ways in which traditional notions of carer and provider are conceived, for example, in the provision of welfare and child support policy. This may necessitate a revision of the way residence is conceptualised.

‘Families’ and family practices stand at the intersection of a range of trends affecting society as a whole. Giddens (1998: 89–90), points to ‘increasing equality between the sexes, the widespread entry of women into the labour force, changes in sexual behaviour and expectations, [and] the changing relationship between home and work’. There can be no doubt that these trends reflect a new willingness and openness in fathers’ relationships with their children that are challenging the notion that men’s lives are centrally located in the public rather than the private sphere. To some extent, in the practice of shared residence, we are looking at a microcosm of wider societal issues. Shared residence arguably provides a unique platform upon which these competing demands, expectations and aspirations are being played out, precisely because it takes place on the periphery of normative roles and expectations – what it means to be a father, a mother, a family, and so on – to some extent free from the cultural scripts that tie us into certain pervasive family ideologies; the mechanisms through which representations of what family life should be like are promoted as normal or ‘natural’.

In this respect, it is again worth pointing to the shared residence ‘cluster’ that was encountered through the sampling procedure (see Ch. 5 for a further discussion), where I found an instance of six fathers practising shared residence within one school-class year group, equating to just over 20 percent of the class). One father remarked that he had no doubts that seeing how other parents were managing post-separation parenting had influenced his ex-wife’s amenability towards such an arrangement when they separated. This type of account reveals a growing cultural acceptance of shared residence. Just as separation and divorce had become normalised within this school both for the parents and for the children, so too were new ways of dealing with it. Here, the predominance of a primary carer model had been transformed into a situation where fathers were involved

participants in the lives of their children in equal measure to mothers. While the extent to which these developing practices are causal in influencing parents' decisions is hard to say, it is nonetheless reasonable to suppose that the more widely accepted the practice becomes, the more likely it is to be taken up as a serious option when parents separate.

In this context, I would like to end by using the concept of 'spill-back', as developed by Lindberg and Scheingold (1970) within a 'European Communities' literature, to suggest that through the very practice of shared residence, an opportunity is being created not only for such models of post-separation parenting to become more commonplace, but for engaged and participative parenting practices to 'spill-back' into wider communities and society more generally, acting as 'benchmarks' with which to signal extended debate and change. This goes some way to counter arguments that gender equity in the context of family breakdown risks perpetuating wider inequalities in divisions of labour, without first addressing these issues within intact-couple households (e.g. Sottomayor, 1999). While this does not necessarily mean that we should rethink the rejection of a presumption of shared residence to be made in law, it does however point to the fact that we should be mindful not to equate such a rejection with the practice of shared residence *per se*. Instead, we should turn our attention on how best to support such practices.



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# Appendix 1

## British and French letters of introduction

UNIVERSITY OF

**BATH**

**Department of  
Social and Policy Sciences**

Room 4.34

Bath BA2 7AY

United Kingdom

Email: [ssmfam@bath.ac.uk](mailto:ssmfam@bath.ac.uk)

Tel: + 44 (0)1225

Dear

**Re: Research study**

**Managing shared residence in Britain and France**

I am a postgraduate researcher attached to the Department of Social and Policy Sciences at the University of Bath, where I am carrying out a Ph.D. comparative study in to shared residence in Britain and France. The study is being funded by the Economic and Social Research Council and explores fathers' experiences of negotiating and managing such arrangements for their children where parents do not live together (usually as a result of separation or divorce, though sometimes of parents never having lived together).

Over the coming months, in-depth interviews will be carried out with around 15–20 fathers in both Britain and France and I am currently looking for research volunteers to take part. The interviews will be of approximately one hour's duration and will be audio taped for transcription purposes. These transcripts along with the audiotapes will remain completely **confidential** and pseudonyms will be used in any subsequent written publications and oral presentations.

My aim is to explore similarities and differences in approach between fathers' experiences in each national context. This will involve talking about how residence arrangements have been negotiated and matters relating to work and school practices, health care, parenting styles, childcare, finances, the different patterns of care that have been adopted, and so on. Through the research I hope to highlight the variety of arrangements that parents have with their children and learn more about what shared residence entails. All fathers who volunteer to take part in the study will bring different experiences and understandings of their situation to the research and are likely to have more to say regarding certain themes than others.

It is important to note that the study does not look specifically for officially defined 'resident' or 'non-resident' fathers. Rather, the main criteria is that participants will generally have their children (that is, at least one child under the age of nineteen)

residing with them somewhere in the region of between 30–70 percent of the time during the year.

Every story is unique and can help to inform policy and shed light on one of the central questions of this research: What helps and what hinders fathers in adopting and managing shared residence arrangements? For further information or to arrange an interview please contact me by e-mail, letter or telephone using the above contact details.

Yours sincerely

**Alexander Masardo BA Hons., MRes**

**À qui de droit**

**Négociation de la résidence alternée en France et en Royaume-Uni**

Monsieur

Je suis chercheur anglais (étudiant du troisième cycle) attaché à la faculté des sciences humaines et de la politique sociale à l'Université de Bath en Angleterre où je fais des études de doctorat. Mon domaine concerne les recherches comparatives sur la négociation de la résidence alternée dans la société française et britannique, financées par le ESRC (Economic and Social Research Council).

Pour faire cette étude il me faut à peu près 15–20 volontaires qui offriraient de participer à une interview/discussion informelle d'une durée d'une heure plus ou moins.

La discussion sera avec des pères séparés/divorcés qui couramment partagent avec la mère de ses enfants (moins de 19 ans) la résidence ou garde de ceux-ci (à peu près, entre 30–70 percent du temps). Cela peut être aussi avec les pères qui ne sont ni mariés ni séparés. Mon but est d'examiner autant les différences que les similarités qui s'attachent aux diverses méthodes d'organiser et diriger les arrangements pour effectuer la résidence alternée.

En particulier je voudrais parler avec les pères; ceux qui sont actuellement affectés par les négociations post-2002 (réforme de la loi sur l'autorité parentale du 4 mars 2002) afin de découvrir comment marche la réforme dans la pratique. C'est-à-dire, quelles sont les influences et de quelles façons peut-on se conformer à la réforme.

Il faut aussi discuter de l'évolution des négociations qui concerne les modèles sur lesquels votre mode de vie doit suivre. C'est-à-dire tous ce qui concerne les routines scolaires, la santé, discipline parentale, gardes, finances, les durées de temps chez chaque parent, etc.

Si vous désirez partager ou avoir des informations complémentaires, vous pouvez me contacter par e-mail, téléphone ou par lettre (voir au-dessus). Je suis disponible pour faire l'interview chez vous ou dans une localité convenue entre nous. Vous serez bienvenue pour parlez librement et en toute confiance de vos expériences en ce qui concerne la négociation, l'organisation, la direction ou administration de vos arrangements pour la résidence alternée. Je m'intéresse tout autant à ce qui a facilité les arrangements que ce qui a milité contre.

Les interviews seront enregistrés en audio cassette afin de les transcrire plus tard. Tout ce qui sera enregistré restera strictement **confidentiel** et privé. Votre anonymité et votre vie privée seront toujours préservés, sans cesse, tant pendant la conservation de la matière, que la transcription, et la publication de la matière cherchée.

Si cela vous convient, je vous remercie d'avance de bien vouloir me consacrer de votre temps en participant à cette étude. Je vous prie de croire, Monsieur, à l'assurance de mes salutations distinguées.

**Alexander Masardo BA Hons., MRes**

## **Appendix 2**

### **British and French topic guides**

#### **EXPLAIN RESEARCH**

- Confidentiality/Informed Consent
- Discuss strategies for sensitive topics

#### **HOW HAVE CONTACT PATTERNS AND LIVING ARRANGEMENTS EVOLVED?**

- Background
- Current pattern of residence? What this involves (term-time/holidays/Xmas/B'days)
- What processes did you go through to arrive at the current arrangement?
- Legal Frameworks
- Mediation
- Private ordering

What form did this take? Who was involved? What difficulties did you encounter? What were the positive aspects that made it possible? What were the obstacles?

#### **ABOUT THE CHILDREN'S MOTHER (current relationship/dynamics)**

- Relationship before/after separation
- Mothers current situation
- How/in what ways does this impact on your relationship with her, the children and/or parenting arrangements?
- Extent of contact with her, how you communicate, make arrangements and negotiate. Give examples (e.g. directly; through children; telephone, etc.)
- Describe any conflict
- What strategies do you employ for reducing conflict? Give examples
- Flexibility over arrangements. How flexible are you and other parent to changing/adapting plans or schedules? Give examples

#### **ABOUT THE CHILDREN**

- Relationship with children – before and after parental separation
- Extent to which children involved in determining present arrangement
- How do the children cope with living across two households? Concerns about this?
- What difficulties/obstacles have you encountered?
- Do you see this arrangement changing as they get older? If so, how?

#### **SUPPORT**

- A little about your family background
- What wider family support have you received/are you receiving?
- Significant individuals - How involved in care of children?
- Other support – practical and emotional
- How common is this type of arrangement? Do you know others in similar situation? Ask about passing details of study on to other fathers with shared residence
- How do you feel when the children are not with you? (coping strategies)

### **ABOUT YOUR JOB**

- How far have you tailored your job to meet needs of shared residence arrangement?
- How does current income impact on shared residence arrangements?
- Main expenditures

### **FINANCIAL SUPPORT**

- Does anyone else help you financially or in kind (e.g. grandparents, other family members, partners, child(ren)'s mother, etc.)?
- Financial contributions (if any). Do you make or receive child support payments or provide any indirect financial support when children are not with you?

### **SOCIAL POLICIES**

- Recognition of child-care responsibility. Specific assistance – welfare/social security/ health care benefits (e.g. child benefit, housing assistance, tax credits, etc)
- Questions of non-residency and access to welfare mechanisms. Is one parent entitled to certain assistance due to 'residency' status, while the other is not? What assistance and how is this negotiated between you, your ex-partner, and the system (e.g. are there any benefits that you share)?
- Do children need to be registered at one address? What problems can be associated with this?

### **CONTACT WITH PROFESSIONALS**

- Doctors/dentists; health visitors/teachers/social services? Is this done by you alone; the mother alone; both separately or jointly together?
- Registered in same place or separately?

### **SCHOOL**

- How this works and how it influences shared care practices

### **PROFILE**

- Further contextual information – a little more about yourself

### **FINAL QUESTIONS**

- Any other issues you would like to raise?
- Questions you would like to ask me (e.g. about the study)?
- Subject to analysis of data, would you be willing to participate in shorter, follow-up interview where necessary?
- ASK ABOUT SNOWBALLING
- Thank respondent – Give Book Token for children £10/15 (15/20 euros)

## **EXPLAIN RESEARCH**

- **Confidentiality/ Informed Consent**
- **Discuss strategies for sensitive topics**

### **L'arrière-plan**

- Dites-moi un peu l'histoire, l'arrière-plan de votre situation.
- Les arrangements sur le contact et conditions de vie, comment sont-elles élaborées ou se développées? Est-ce-que vous avez pu s'arranger quelquechose avec votre partenaire?
- Qu'est-ce-qu'ils sont les aspects positives qui mis en train les plans /qui a fait possible les arrangements? Et qu'est-ce-qu'ils sont les aspects négatifs? Il y a les obstacles/les difficultés?

### **L'arrangement courant**

- Est-ce-que les arrangements exigent une organisation considérable? Expliquez comment ça marche pour vous
- Comment est-il partagé le temps? La division du residence, comment est-il organisé? (Les périodes d'écoles; pendant les vacances; Noël; les anniversaire, etc.)

### **Processus que vous avez suivi pour arriver a cet arrangement**

- Des processus judiciaires;
- Des processus du l'entremise ou médiation; le rôle des familles étendue; et
- Jusqu'à quel point avez-vous fait les accords/ les arrangements vous-meme – sans ingérence?

### **Au sujet de la mère (des enfants)**

- Quelle est sa situation domestique actuellement?
- Comment sont les dynamiques entre vous – par exemple, l'entendement, la compréhension des problèmes, le degré et la nature du contact avec elle?
- Comment vous vous communiquez? De quelle façon vous vous communiquez?
- Comment vous négociez les arrangements? Donnez-moi quelques exemples. Par exemple: directement? Par l'entremise des enfants? Par telephone? etc.

### **Flexibilité**

- Au sujet de flexibilité en ce qui concerne changement des plans, ou adaptation des horaires ou des programmes, pouvez-vous tous deux faire preuve de souplesse?

### **Conflit**

- S'il y a des conflits, pouvez-vous me les décrire? Et si vous avez des stratégies d'emploi pour les améliorer – donnez-moi des exemples

### **Sur les enfants**

- Pouvez-vous me dire quelque chose au sujet des enfants. Par exemple, votre rapport avec vos enfants avant et après le séparation et quel sont les difficultés/les obstacles que vous avez rencontré?
- Les enfants étaient-ils impliqués à cet égard concernant les arrangements courants? Ont-ils influencé en quelque part la détermination des événements? Jusqu'à quel point ont-ils influencé la résolution?



- Comment pensez-vous que les enfants/se débrouillent avec la résidence en alternance/la résidence alternée? Avez-vous des inquiétudes avec ça?
- À mesure que les enfants s'agrandissent, pensez-vous que c'est probable que les arrangements vont changer? Si vous pensez que oui, donc comment? Et en quel moyen/façon/manière?

### **Soutien**

- Quel sorte de soutien avez-vous reçoit, par exemple de votre famille, ou sa famille – de vos amies ou des autre père – qui sont les autres significatifs dans leurs vies? Comment et en quelle manière prêtent-ils leurs appui – comme nourriture/garder, financière, moyens d'existence, ressources emotionels et concret?
- Comment sont vos sentiments quand les enfants ne sont pas avec vous? Avez-vous des stratégies pour vous en sortir de ces problèmes emotionels?

### **Ask about snowballing**

- Pensez-vous que cet type d'arrangement est comun ou non? Avez-vous entendu parler des autres arrangements comme la votre?
- Connaissez-vous des autres familles dans la même situation?

### **Politiques sociaux**

- En ce qui concerne les politiques sociaux et de reconnaissance de responsabilité de nourrisse/garder les enfants – En ce qui concerne le sujet du reconnaissance de nourrice/garde par les autorités
- Est-ce-que vous recevez de l'assistance specifique? De l'aide social? Des allocations? Des prestations? Des pensions alimentaire? De l'aide avec le logement?

### **Questions au sujet de non-résidence**

- Est-ce-que c'est un seul parent qui peut reclamer les prestations? Ou bien qui a le droit aux allocations? Et l'autre parent? A-t-il aucun droit?
- Est-ce-qu'il y a des prestations que vous vous partagez entre vous? Comment est l'entretien divisé entre vous?
- Sont les enfants enregistrés sur un seule adress ou deux en ce qui concerne l'ecole/ le médecin, etc? Qu'est-ce qu'ils sont les problèmes associés avec ça?

### **Sur votre travail.**

- Est-ce-que vous avez pu adapter votre travail/emploi aux arrangements qui sont exigés par les arrangements du résidence alterné?
- Votre revenu est modifié par les arrangements du résidence alternée?
- Quels sont les consequences sur votre vie et votre revenu?

### **Les contributions financières:**

- Entretien entre vous. Est-ce-que vous dependez financièrement de quelqu'un ou quelqu'autorité?
- Est-ce-que vous avez reçu ou bien payez-vous des paiements d'entretien des enfants?
- Est-ce-que vous donnez de l'aide financière même que les enfants ne soient pas chez vous?

**Le contact avec les professionnelles**

- (comme les dentistes/les professeurs/le médecin, etc.). C'est surveillé par vous; par la mère; ou bien ensemble?

**L'école**

- Comment il marche. Par exemple, Est-ce-que l'école envoyer des copies des reports, etc. a chaque un ou quoi? Comment-il influence en pratique de résidence alternée?
- Quels sont les difficultés qui se présentent en tout qui concerne la routine scolaire par la résidence alternée?

**Final questions**

- Avez-vous des autre questions ou autre points que vous voulez me poser ou me demander; par exemple au sujet de la recherche?
- Qu'en pensez-vous au sujet de la paternité dans la société d'aujourd'hui?
- Finalement, je voudrai vous demander plusieurs questions en general à propos de vous-même afin de contextualiser cet entretien/cette interview. Veuillez me raconter un peu au sujet de vous-même. Des informations contextuels - par exemple, votre âge, vos compétences educationaux, vos diplômes et qualifications professionnelles, etc. Ton milieu (familial, etc.), vos parents étaient-ils mariés, séparés, etc? Avez-vous des frères ou des soeurs?
- Si, sur l'analyse des données, je veux vous-demander des autres questions, est-ce-que c'est possible de vous contacter encore une fois?
- ASK ABOUT SNOWBALLING: Connaissez-vous des autres pères avec la résidence alternée de leurs enfants?

Je vous remercie – chèque-livre pour les enfants (15/20 euros)